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THE
REPORTS OF THE COMMITTEES

OF THE
SENATE OF THE UNITED STATES

FOR THE
SECOND SESSION OF THE THIRTY-FIFTH CONGRESS.

IN ONE VOLUME.

WASHINGTON:
WILLIAM A. HARRIS, PRINTER.
1859.



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IN THE SENATE OF THE UNITED STATES.

DECEMBER 16, 1858.—Ordered to be printed.

Mr. DAVIS submitted the following

REPORT.

The Committee on Military Affairs and the Militia, to whom was referred the petition of Augustus Moor, having had the same under consideration, report:

The petitioner was lieutenant colonel 4th regiment Ohio volunteers, in the war with Mexico.

Upon being ordered with his regiment, on the 19th of September, 1847, from Vera Cruz to Puebla, under command of General Lane, he left his baggage at the former place, in charge of the quartermaster, to be forwarded by him to Puebla.

He states that he has never been able since to recover his said baggage, embracing his pistols, wearing apparel, &c., which he values at from two to three hundred dollars.

Hon. George E. Pugh, senator from Ohio, files a statement in favor of this claimant, and corroborates his statements generally; but the committee do not find that the petitioner presents a case which justifies payment by the United States for the losses sustained as set forth in his averment, and therefore report that the prayer of the petitioner be refused.

IN THE SENATE OF THE UNITED STATES.

DECEMBER 16, 1858.—Ordered to be printed.

Mr. DAVIS submitted the following

REPORT.

The Committee on Military Affairs and the Militia, to whom was referred the petition of William Merrihew, an officer in the Mexican war, having had the same under consideration, report :

The petitioner states that he was a lieutenant in company E, 3d dragoons, in the Mexican war. "That his pay and emoluments amounted to about \$90 per month, out of which he had to subsist himself, his servant, and two horses—to which he was entitled under the regulations of the army; and that such sum was wholly inadequate for the support of such necessities." He therefore asks to be allowed \$8 per day, instead of \$90 per month, for his 399 days of service in the field.

The committee find nothing to justify the conclusion that the petitioner received a smaller amount for his services than the sum allowed to him and all others similarly situated, whilst serving with the army in Mexico, and report as follows :

That the prayer of the petitioner be refused.

IN THE SENATE OF THE UNITED STATES.

DECEMBER 16, 1858.—Ordered to be printed.

Mr. DAVIS submitted the following

REPORT.

The Committee on Military Affairs, to whom was referred the petition of Joseph Verbiski, having had the same under consideration, report:

That the petitioner enlisted in the United States army in October, 1851, as a private, and was attached to company I, 2d infantry. While engaged in firing a national salute at Fort Yuma, California, on the 4th of July, 1852, the accidental discharge of a cannon blew his left arm from his body, seriously injured his right arm, almost destroyed his power of speech, and otherwise so injured him that he is totally unfit for manual labor. He was honorably discharged from the army at San Diego, California, in January, 1853, when his name was placed upon the pension rolls, under the existing laws, at \$8 per month, it being the largest amount to which he was so entitled. His injuries, received in the manner above stated, prevent him from engaging in any profitable employment, and he prays that his pension may be increased to \$20 per month.

Among other considerations, it will be remembered that, for the purpose of removing the necessity for extraordinary or increased pensions in cases of peculiar hardship, military asylums were established in 1851, where the wounded soldier might pass the residue of life free from all its cares and vicissitudes. The petitioner is an inmate of that institution, where he surrenders his pension for a comfortable home, and is probably better provided for than he would be out of the institution, even with the increase of pension he now asks for.

The committee report that the prayer be not granted.

IN THE SENATE OF THE UNITED STATES.

DECEMBER 21, 1858.—Ordered to be printed.

Mr. JONES made the following

REPORT.

[To accompany Bill S. 462.]

The Committee on Pensions, to whom were referred the petition of William Wallace, a soldier in the war of 1812, praying an increase of pension, and also Senate Bill No. 462, for the relief of the said William Wallace, beg leave to report:

The said petitioner was placed upon the roll of invalid pensioners by special act of Congress, and has received a pension of six dollars per month since March 4, 1854. The grounds upon which said pension was granted are set forth in the report of the Committee on Invalid Pensions of the House of Representatives, submitted by Mr. Hendricks, as follows:

“That the petitioner served as a corporal in Captain Whiting’s company of the 23d regiment of United States infantry, from the 26th day of February, 1813, during the war of 1812. That on the 25th day of July, 1814, at the battle of Bridgewater, he was wounded in his left thigh by a musket-shot; that he was carried from the field and remained in the hospital for several months; that the ball was not taken from the wound, but remains in the limb at this time, and that the injury has within a few years so increased, as three-fourths to disable him from obtaining his subsistence by manual labor. These facts are established by the testimony of William Lichler, who served in the same company with the petitioner, and was with him when wounded, and who attended upon him in the hospital for two weeks after he was so wounded; and by the testimony of Thomas and Elizabeth Cromwell, who have known him from the time of his discharge from the army; and by the certificates, given under oath, of Oliver Everett and J. B. Gregory, who are certified to be surgeons reputable in their profession.

“The petitioner made application at the Pension Office, but was refused a pension, because he could not produce the testimony of a commissioned officer, or of more than one private of the company in

which he served, to establish his claim, which was required under the law and regulations governing that office. The committee report a bill for his relief, and recommend its passage."

The petitioner now comes forward and shows by the testimony of Oliver Everett, M. D., and N. W. Abbott, M. D., given under oath, that he is *totally* disabled, and as the professional standing of these two witnesses is vouched for by the clerk of the court of Lee county, Illinois, where they reside, the committee must be governed thereby, and therefore recommend that a full pension of eight dollars per month be allowed.

The second section of the bill provides for arrears of pension back to 1814. This is contrary to the rule which has invariably governed the committee in like cases, and they can see no reason to vary the rule in the present instance. They therefore recommend that the second section be stricken out, and with this amendment, recommend that the bill pass.

IN THE SENATE OF THE UNITED STATES.

DECEMBER 22, 1858.—Ordered to be printed.

Mr. REID made the following

R E P O R T .

[To accompany Bill S. 480.]

The Committee on Patents and the Patent Office, to whom was referred the petition of James G. Holmes, have considered the same, and report :

The petitioner, James G. Holmes, on the 24th of September, 1844, obtained a patent for an "improvement in chairs for invalids," for fourteen years. Some fourteen months before the expiration of his patent he applied, in person, to the then Commissioner of Patents, for an extension of his original patent, but was told that he could not entertain an application made so long in advance of the expiration of his patent. He further alleges that he intended coming on to Washington to make his application in conformity with the law, but was prevented by the indisposition of his family and himself from doing so till ten days after the time prescribed by law, when he was informed that it was too late to file his application.

He states that his patent has not remunerated him.

The committee report a bill to authorize the Commissioner to examine the case upon the filing of the application and accounts, and determine the case upon its merits, without prejudice on account of the failure to file the application at the time prescribed by law.

IN THE SENATE OF THE UNITED STATES.

DECEMBER 22, 1858.—Ordered to be printed.

Mr. DAVIS made the following

REPORT.

[To accompany Bill S. 463.]

The Committee on Military Affairs and the Militia, to whom was referred the bill (S. 463) for the relief of Lewis C. Forsyth, having had the same under consideration, report:

Mr. Forsyth was paymaster's clerk in the United States army from April 1, 1848, to May 31, 1849—14 months—and was paid at the rate of \$500 a year, under the act of 1828, chapter 162, section 20, until August 12, 1848, when his salary was increased to \$700 a year by the act of that date, chapter 168, section 2.

The object of this bill is to give him \$3 a day for the entire term of his service, instead of the amount allowed by law, which he has received.

The pay of these officers is fixed by law, and the increased amount allowed by the act of 1848 was to compensate them for duties consequent upon the Mexican war. During that war paymasters were compelled to employ clerks in the enemy's country, and pay them \$3 a day for their services; but this case is not one of that character. Mr. Forsyth was appointed in accordance with his own wishes at \$500 a year, and was paid at the rate of \$700 a year for ten out of the fourteen months of his service, by the act of 1848.

The committee, after an impartial and deliberate examination of this claim, decide that he is not entitled to any further allowance, and report the bill back to the Senate, with the recommendation *that it do not pass.*

IN THE SENATE OF THE UNITED STATES.

DECEMBER 22, 1858.—Ordered to be printed.

Mr. DAVIS submitted the following

R E P O R T.

The Committee on Military Affairs and the Militia, to whom was referred the memorial of Doctor Israel Moses, having had the same under consideration, report:

The memorialist prays the adoption into the medical department of the army of an improved ambulance or carriage, for the transportation of the sick and wounded of armies, of which he is the inventor.

A board of medical officers, convened in the city of New York on the 10th of March, 1858, for the examination of this invention, report in favor of its usefulness and convenience to an army; and the Surgeon General, in his letter of the 5th of May last, says: "The propriety of purchasing either the patent right or a supply of the carriages will depend upon the price demanded by the owner; and it is thought that the sum (\$850) asked for the one now on exhibition in this city is extravagant. It is believed that an ambulance embracing its advantages and usefulness could be purchased for a less sum, which would be available for all the purposes contemplated."

Concurring with the Surgeon General in this opinion, the committee ask to be discharged from the further consideration of this subject.

IN THE SENATE OF THE UNITED STATES.

JANUARY 10, 1859.—Ordered to be printed.

Mr. MALLORY submitted the following

REPORT.

The Committee on Claims, to whom was referred the petition of Radford, Cabot & Co., have had the same under consideration, and thereupon report:

The petitioners state that John D. Radford of St. Louis was appointed in July, 1857, sutler in the field to the 5th regiment of United States Infantry, then under orders for Utah; and that having associated with him Messrs. Cabot and McFarland, and purchased the "requisite goods," he left Leavenworth City in August, 1857, to join the regiment, which he overtook and joined on or about the first of November following, at or near the junction of Ham's and Black's Forks. The petitioners then say: "After remaining there a period of two days they received orders to march at eight the following morning. On that morning they discovered that two hundred and ninety-four head of their oxen had been stolen from them by the Mormons. A party of dragoons and others were sent in pursuit and came on the trail of a large number of oxen being driven in the direction of Salt Lake city; but they, having orders not to proceed more than six or seven miles, abandoned the pursuit. Your petitioners then received orders from Colonel A. S. Johnston to corral their wagons and wait until he sent for their relief, which orders they obeyed and remained there a period of two weeks."

The claims of the petitioners are thus stated:

List of losses sustained by Radford, Cabot & Co., at the hands of the Mormons on the night of the 3d November, 1857, viz:

Two hundred and ninety-four head of oxen stolen by the Mormons, at \$75	\$22,050 00
Losses incurred by being ordered to remain in rear of the army in Utah, and remaining near the junction of Ham's & Black's Forks, after the loss of the oxen, under orders from Colonel A. S. Johnston	12,650 00
	<hr/>
	34,700 00
	<hr/>

For this sum of \$34,700 the petitioners seek relief at the hands of Congress.

Your committee can see no just grounds upon which the government can be held liable for all or any portion of it. The memorialists accepted the post, and assumed the duties of "sutler in the field" to the marching regiment, subject to all its hazards and chances of profit and loss; and the United States could not undertake to become insurers against loss of property.

It is presumed, and indeed the memorialists, in effect, admit that General Johnston used efforts to recover the property which, in his judgment, were proper.

Your committee report that, upon the facts as presented, the memorialists are not entitled to the relief prayed for, and they ask to be discharged from the further consideration of the case.

IN THE SENATE OF THE UNITED STATES.

JANUARY 11, 1859.—Ordered to be printed.

MR. SHIELDS made the following

REPORT.

[To accompany Bill H. R. No. 324.]

The Committee on Revolutionary Claims, to whom were referred the petition and accompanying papers of Samuel Jones, the legal representative of Capt. Samuel Jones of the Virginia line, of the revolutionary army, report :

That this case was submitted at the last session to the Committee on Revolutionary Claims of the House of Representatives, who made a report thereon, which report is hereto annexed, and adopted by this committee, to wit :

“It appears from the evidence before your committee that there were two officers in the Virginia line of the same grade and of the same name, belonging one to the 11th and one to the 15th regiment. The Captain Jones who belonged to the 15th regiment, was dismissed from the service in 1778. The other continued in active service till 1779, at which time several companies, broken by the events of war, were united to make full companies, by which arrangement the Samuel Jones under consideration was left without a command, and became a supernumerary, and, from the testimony of Chief Justice Marshall and that of others, your committee believe he so remained till the end of the war. The committee report a bill.”

IN THE SENATE OF THE UNITED STATES.

JANUARY 12, 1859.—Ordered to be printed.

Mr. MALLORY submitted the following

REPORT.

The Committee on Naval Affairs, to whom was referred the memorial of Commander E. B. Boutwell, United States Navy, have had the same under consideration, and thereupon report :

The memorialist asks Congress for \$14,435 in consideration of certain services performed and expenses incurred, and he further asks for the half-pay of a naval captain for and during the time of his suspension. The allegations of the memorialist upon which this extraordinary claim is based are these: "Your petitioner after a service of thirty-nine years in the Navy of the United States, and a late and arduous cruise of two years and some months in the Pacific (the latter having greatly impaired his health) has been tried by a court martial and suspended for five years on half-pay, being nine hundred dollars per annum.

"Your petitioner does not propose to discuss the justness of that sentence, or the prejudices which brought about his trial, but to ask your honorable body, in consequence of the deprivation of the support to which his long and faithful service in the navy of his country entitles him, that certain allowances may be made to him for extra services rendered by him in obedience to orders, and for moneys by him laid out and expended.

"Your petitioner shows that he was obliged to perform the duties of commander and *purser* of the United States steamer Colonel Harney, from the 19th of January, 1844, to the 15th of October, ensuing; and that the sum of twelve hundred dollars is a just and reasonable sum to be allowed to him as acting purser of a second class steamer for that period; and he prays leave to refer to the annexed document, marked A, in support thereof."

"That in the year 1855, while your petitioner was in command of the United States ship John Adams, at the Fejee Islands, he was called upon to officiate as a judge of a court of claims, and also in a diplomatic character, and to entertain and support the United States consul of that place on board his ship for a long space of time, and to provide for prisoners, witnesses, interpreters, and attorneys, all of which was

done at his own individual expense, and for which no provision or allowance whatever has ever been made to your petitioner. That he received special instructions from the commodore of the Pacific squadron, containing, among other things, the following: 'It is the desire of the Navy Department that every reasonable effort be made to preserve and strengthen the friendly relations now subsisting between the United States and the Sandwich Islands.' In pursuance of the said orders your petitioner found it necessary and expedient to entertain, and did so entertain the King and government officers of these islands, at various times, out of his own private funds, and for which no provision or allowance has ever been made to your petitioner; and he avers that for his services at the Fejee Islands and other Polynesian Islands, not in the line of his duty, and for the disbursements he was obliged to make, he is reasonably entitled as compensation to the sum of twelve thousand five hundred dollars.

"He further prays that he may be allowed the difference between sea and leave pay, from the 1st of January, 1857, and the 14th of February, 1857, the day on which he arrived in the United States, amounting to fifty dollars.

"He further prays that he may be allowed his travelling expenses from Valparaiso to New York, under a sick ticket, after a medical survey had been had upon him, amounting to the sum of three hundred and eighty-five dollars.

"Also that he may be allowed the difference between duty and leave pay whilst attending on the court of inquiry in the city of Washington, in pursuance of a decision of the Navy Department, amounting to the sum of one hundred dollars. Your petitioner respectfully submits, on this point, that he is as much entitled to duty pay, while acting under the orders of the department, as if he were a witness before a court martial.

"Your petitioner further sheweth that, in consequence of the troubles at San Francisco, in the year 1856, he was detained at that place for many weeks in his ship, the John Adams, by order of his senior officer, at great expense to your petitioner, whereby he was prevented from going to sea, in obedience to the orders of the commodore of the Pacific squadron, until it was too late in the season to visit many of the Polynesian Islands, and by reason whereof his troubles with Commodore Mervine arose. And on his arrival at Valparaiso, through the Polynesian Islands, his health became so completely impaired, and he became so dangerously ill, that he was forced to remain on shore for several weeks at his own expense, costing him two hundred dollars, which amount he prays may be refunded to him.

"Your petitioner further prays that he may be allowed the half-pay of a captain, during his suspension, inasmuch as a vacancy for promotion occurred in that grade in June, 1857, which he was entitled to fill, and in consequence of the reports of Commodore Mervine, he was not promoted nor tried until June, 1858, after the vacancy had been filled by the restoration of the retired officers; your petitioner averring that by the law of the land a man is considered to be inno-

cent until convicted by a competent court, and that your petitioner ought by right to have been promoted or had his trial in June, 1857. Otherwise, if he is not entitled to the increased pay, he will be punished twice for the same matter, once before and once after trial."

The first allegation, which is, "Your petitioner, after a service of thirty-nine years in the navy of the United States, and a late arduous cruise of two years and some months in the Pacific, (the latter having greatly impaired his health,) has been tried by a court martial and suspended for five years on half-pay, being nine hundred dollars per annum," implies that the memorialist was, by the sentence of a court martial, suspended for five years on half-pay; whereas the court martial referred to sentenced the memorialist to be dismissed from the naval service, a sentence which was mitigated by executive clemency to five years' suspension; and this correction is not unimportant.

The second allegation in effect is, that fourteen years ago he served during nine months as purser of the steamer Colonel Harney, and for this he claims twelve hundred dollars. This unjustifiable claim is unworthy of serious attention. The Navy Department assumes and constantly exercises the right to devolve pursers' duties upon the commanders of small naval vessels like the Colonel Harney, without the additional compensation; and no such claims have been recognized by Congress or the department. During his pursership he disbursed \$4,068 36.

The next claim is for \$12,500, and is based on the allegation that while commanding the sloop John Adams, at the Fejee islands, "he was called upon to act as judge of a court of claims, and also in a diplomatic character, and to entertain and support the United States consul of that place on board of his ship for a long space of time, and to provide for prisoners, witnesses, interpreters, and attorneys, all of which was done at his own individual expense," &c., &c.; with the further allegation of having entertained the "King and government officers of the Sandwich Islands," &c. [For the memorialist's report of these and other proceedings, see Ex. Doc. 115, 1st session, 34th Congress.]

These allegations are so vaguely stated, that your committee cannot regard them as calling for relief. This extraordinary demand of \$12,500 should be sustained by some distinct and positive proof, and an approximation, at least, to the special items of expenditure.

The next claim is for the difference between "leave" and "sea-pay" from the 1st of January, 1857, (the day on which he left his ship) to the 14th of February, (the day of his arrival in the United States,) amounting to \$50; and also for his travelling expenses from Valparaiso to New York, under a sick ticket, after a medical survey had been held upon him, amounting to \$385. These claims are totally inadmissible. The departmental rule, and your committee regard it as a just one, is, that officers who return from a foreign station in consequence of sickness, and who do not rejoin their vessels, are considered as passengers merely, and not entitled to duty-pay on their passage home.

The memorialist, it must be remembered, abandoned his ship under

COMMANDER E. B. BOUTWELL.

very peculiar circumstances, the history of which will be best understood by a perusal of the following papers:

VALPARAISO, CHILE,
December 11, 1856.

SIR: You will hold a strict and careful survey upon Commander E. B. Boutwell, commanding United States ship John Adams, and report to me in duplicate your opinion in his case, with such recommendations as you think necessary; and you may procure such medical advice as, in your judgment, is advisable.

Very respectfully, &c.,

E. B. BOUTWELL,
Commanding United States Ship John Adams.

Assistant Surgeon THOMAS J. TURNER,
United States Ship John Adams.

VALPARAISO, CHILE,
December 11, 1856.

SIR: In obedience to your order of December 11, 1856, I have held, in conjunction with Doctors Page and Trumbull of this city, a strict and careful survey upon you. We find that you are affected with a nervous dyspepsia, and are unfit for further service—the probable duration of your disease may be many months; and recommend that you return to the United States, as further service in your present condition will be extremely prejudicial.

Very respectfully, we have the honor, &c.

THOS. J. PAGE, M. D.
J. H. TRUMBULL, M. D.
THOS. J. TURNER,

Assistant Surgeon United States Navy.

Commander E. B. BOUTWELL,
Commanding United States Ship John Adams.

UNITED STATES SHIP JOHN ADAMS,
Valparaiso, Chile, January 1, 1857.

SIR: In accordance with the recommendation of the medical survey in your case, you will return to the United States so soon as you may be able to risk the fatigues of the passage across the Isthmus of Panama.

On your arrival at Washington city, you will report to the Secretary of the Navy.

Very respectfully, your obedient servant,

E. B. BOUTWELL,
Commander and Senior Officer in Port.

Commander E. B. BOUTWELL,
*Commanding United States Ship John Adams,
Harbor of Valparaiso.*

For the abandonment of his command in this manner turn to the United States upon his own motion, he was, by the Secretary of the Navy, subjected to charges upon which he was tried by a court martial, and by it was found guilty, and sentenced to be dismissed the service; and now to allow his claims for the difference between "leave" and "sea-pay," and for his travelling expenses, would be to compensate him for doing the very thing for which the court sentenced him to dismissal.

The next claim is for the difference between "leave" and "duty-pay" while attending certain naval courts of inquiry, as a witness, in the city of Washington. Your committee are indisposed, by legislation, to modify or abridge the practice of the Navy Department upon this subject, which denied to naval officers other than "leave-pay" when thus attending as witnesses.

The next claim is for \$200 for expenses incurred by him at Valparaiso, and the facts are these. He arrived at Valparaiso on the 9th of December, 1856, gave the command of his ship to Lieutenant DeKraft, and left Valparaiso January 1st, 1857, on his return to the United States, but received his pay as commander of the ship up to this last date. The government is neither legally nor equitably bound to pay his expenses on shore under the circumstances he recites.

The next and last claim is for the half-pay of the captain during the suspension to which the sentence of the court martial, as mitigated by the President, has subjected him; and this is based upon the assertion that a vacancy in the captain's grade occurred in June, 1857, to which he was entitled to be promoted, but that he was not promoted, nor was he tried until June, 1858, the vacancy having in the meantime been filled.

Your committee have only to say that nominations for promotion in the navy are more or less discretionary with the Executive, and that, in their judgment, he wisely exercised his prerogative in refusing to nominate to the highest rank in the service an officer against whose official conduct grave complaints existed, and upon which complaints he was subsequently tried and sentenced to be dismissed.

Your committee can discover no just ground for the allowance of any portion of this claim for \$14,435, and therefore report adversely, and ask to be discharged from its further consideration.

IN THE SENATE OF THE UNITED STATES.

JANUARY 13, 1859—Ordered to be printed.

Mr. SHIELDS made the following

REPORT.

[To accompany Bill S. 506.]

The Committee on Revolutionary Claims, to whom was referred the memorial of the heirs of Stephen Moylan, deceased, praying that the unsettled state of his accounts shall not be a bar to a grant of half-pay by Congress, beg leave to report:

General Stephen Moylan was a colonel in the revolutionary army in the year 1776, and was immediately afterwards directed by Congress to raise and equip a regiment of light dragoons for the continental service. Having succeeded in raising a regiment, he continued to serve, without intermission, until the close of the war, sometimes commanding his regiment in the field, sometimes acting as quartermaster general, and at others as a volunteer aid to General Washington.

In the course of the war he had been intrusted with considerable sums of money for the purpose of equipping his regiment and paying the men, and probably for other purposes. As early as 1779 he was charged on the books of the Treasurer with \$98,038 67, and at the close of the war this charge remained open against him; the sums paid by him never having been entered to his credit by the accounting officers of the government.

The death of General Moylan, and the subsequent destruction of many of his vouchers, render it impossible to understand the true state of the accounts between him and the government. But there are several facts and circumstances which make it probable that the government was in his debt.

Shortly after the war several letters were addressed to General Moylan, urging him to make prompt exhibition of his vouchers, with a view to the settlement of his accounts. In pursuance of these letters, as it is presumed, during the year 1790, General Moylan filed his account, in which he claimed a credit of £35,899 10s. 9d., filing therewith as vouchers the accounts of several captains of his regiment, to whom, as appears from a letter of Peter Hagner, Esq., filed herewith and made part of this report, he had paid considerable

sums of money. Subsequently he filed a second account, in which he claimed £8,478 12s. 1d., the items of which, as appears from the last mentioned letter, were generally supported by vouchers. These sums united amount to nearly \$120,000, which would leave a considerable balance due to General Moylan.

Previously to the filing of these two accounts the officers had been urgent in demanding a settlement. After they were filed, instead of urgency on the part of the officers for a settlement, we find them making excuses to General Moylan for their delay in the adjustment of his accounts, which he had been from time to time demanding at their hands. From this fact it may be inferred that both General Moylan and the accounting officers believed that there was a balance due him by the government. But the heirs of General Moylan do not ask payment of the balance which they believe was due to him, but only that the unsettled state of his accounts shall not be permitted to brand him as a defaulter, nor to stand in the way of the allowance by Congress of half-pay to themselves. Under all the circumstances of the case, the committee feel called on to respond favorably to the prayer of the petitioners. They therefore report a bill for the relief of his heirs.

TREASURY DEPARTMENT,
Third Auditor's Office, April 5, 1836.

SIR: In looking over the reports made by the Committee on Revolutionary Claims in the House of Representatives, received at this office this morning, I find one made by you on the 24th ultimo on the petition of the heirs of *Stephen Maylan*, and to which is appended a letter which I had the honor of addressing to you on the 7th of January, 1835, and in which I stated that "on a register of revolutionary claims presented, it is believed, under the acts of Congress suspending for limited periods the limitation acts, I find the name of Stephen Maylan, who appears from the entry to have filed 'charges against his officer,' and it is remarked in pencil, 'papers missing.'"

Now, I consider it my duty to inform you that since writing to you on the 7th of January, 1835, I have accidentally found among a large and confused mass of papers in the garret of this building two statements of accounts rendered by Colonel Maylan. From the endorsement on one of the statements, it appears to have been rendered on the 23d of January, 1790. There is nothing to show the particular date of the rendition of the second statement, but as the amount of the statement rendered on the 23d January, 1790, is taken up in it, there can be no doubt but what it was rendered subsequent to that date, and probably before the date of Mr. Howell's letter of the 4th of March, 1794. The statement rendered on the 23d January, 1790, amounts to £35,899 10s. 9d., and appears to be exclusively for advances on cash paid the officers who are named as having received the money, but with the statement is filed statements of the accounts

of Captain Craig, Fauntleroy, and Plunkett, (three of the officers who are charged with the money in Colonel Maylan's account, above referred to,) in which are credited considerable sums of money, without stating from whom it was received, though it may be inferred, from the circumstances, that it was received from Colonel Maylan. The second statement amounts (after deducting the amount of the first mentioned statement, say £35,899 10s. 9d., taken up in it) to £8,478 12s. 1d., and purports to be for expenditures made by Colonel Maylan, and the items of said statement are generally supported by vouchers.

With great respect,

PETER HAGNER, *Auditor.*

Hon. H. A. MUHLENBURG,

Chair'n Com. on Rev. Claims, House of Reps.

TREASURY DEPARTMENT,

Third Auditor's Office, October 4, 1850.

A true copy:

JOHN S. GALLAHER,
Third Auditor.

IN THE SENATE OF THE UNITED STATES.

JANUARY 13, 1859.—Ordered to be printed.

Mr. SHIELDS made the following

REPORT.

[To accompany Bill S. 507.]

The Committee on Revolutionary Claims, to whom was referred the petition of William E. Haskell and the other surviving grandchildren of Colonel William Thompson, of the revolutionary army, praying to be allowed compensation and bounty land, have considered the same, and submit the following report :

From the evidence submitted, there is no doubt that William Thompson was a colonel of the 3d South Carolina continental regiment of mounted troops, from the 24th of July, 1776, to the close of the revolutionary war, in 1783; and that he never received his commutation and bounty land; and died on the 2d of November, 1796. To entitle his grandchildren to commutation of five years' full pay, in lieu of half-pay for life, under the resolution of March 22, 1783, and to bounty land, under the resolution of September 16, 1776, it is necessary that they should adduce satisfactory evidence that he served to the end of the war. The evidences of that fact are: 1st. That he is found as colonel of the 3d South Carolina regiment upon the fragmentary muster rolls as late as March 13, 1783. 2d. That the eight captains and many of the subordinates who served in his regiment are shown by the records of the government to have received their commutation for service to the close of the war. 3d. The letter of the Commissioner of Pensions, certifying that Colonel William Thompson served as colonel of the 3d regiment of South Carolina continental mounted troops to the end of the war.

Your committee, believing the claim just and the evidence satisfactory, report a bill to pay the surviving grandchildren of Colonel William Thompson the commutation and bounty land of a colonel of cavalry.

IN THE SENATE OF THE UNITED STATES.

JANUARY 13, 1859.—Ordered to be printed.

Mr. FITZPATRICK submitted the following

REPORT.

The Committee on Military Affairs and the Militia, to whom was referred the petition of Theodore Lewis, having had the same under consideration, report :

The petitioner is military storekeeper at Washington arsenal, and prays that extra compensation may be allowed to officers of his grade for performing the duties of assistant commissaries of subsistence in addition to those incident to their commissions as army officers.

The duties of military storekeepers, at most of the United States posts, are by no means onerous, and if occasionally they may be called upon to act also in other capacities, as alleged, these are contingencies to which all officers of the government are more or less subjected. It is true that military storekeepers, under peculiar circumstances, have been allowed extra pay for extra services; but what is equitable and just in one or two cases is not necessarily so in all of them. The acts of March 3, 1839, and of August 23, 1842, prohibit all extra pay to officers in any branch of the government for the discharge of extra duties, and the act of February 21, 1857, chapter 13, granting increased pay (\$20 per month) to officers of the army, including military storekeepers, was passed for the purpose of avoiding all these applications for extra allowances.

The committee report that the prayer of the petitioner be not granted.

IN THE SENATE OF THE UNITED STATES.

JANUARY 14, 1859.—Ordered to be printed.

Mr. DAVIS made the following

REPORT.

[To accompany Bill S. No. 215.]

The Committee on Military Affairs and the Militia, to whom was referred Senate bill No. 215, for the relief of the executor of Brevet Brigadier General James Bankhead, late of the United States Army, having had the same under consideration, report :

This bill provides for the payment of commissions upon \$101,256 50, collected by the late General Bankhead, for military contributions in Mexico, in 1847 and 1848, (during the war with that republic,) and while he was military governor of Orizaba, the claim for which was rejected by the War Department as not being embraced by the existing laws.

Three general acts have been passed by Congress, allowing commissions upon moneys collected and received as military contributions in Mexico, during the period mentioned above, viz: March 3, 1849, section 2, allowing compensation to all officers and others who had performed the duties of collectors in the ports of Mexico during the war, or had the supervision of such collections; August 31, 1852, chapter 110, extending these provisions to officers and others who were such collectors; and March 3, 1853, chapter 98, embracing all persons who were engaged as receivers of military contributions under such circumstances.

The committee regard these laws as liberal in their provisions, and think they should not be extended, particularly in this case, as it would be granting extra pay to an officer of the army, in violation of the acts of March 3, 1839, and August 23, 1842, and they report the bill back to the Senate, with a recommendation that it do not pass.

IN THE SENATE OF THE UNITED STATES.

JANUARY 17, 1859.—Ordered to be printed.

Mr. FOSTER made the following

REPORT.

[To accompany Bill S. 513.]

The Committee on Pensions, to whom was referred the petition of Mary Elizabeth Larnard, widow of Brevet Major Charles H. Larnard, deceased, late of the United States army, for a pension, having had the same under consideration, submit the following report:

It appears from the evidence before the committee that the petitioner was married to the late Major Charles H. Larnard on the 14th day of May, 1851; that her said husband was appointed 2d lieutenant of infantry in 1831, and served without intermission from that time until his decease; that for his gallant services in the late war with Mexico he was commissioned a brevet major, which rank he held till the time of his death; that while on command at Fort Steilacoom, Washington Territory, in March, 1854, he, with ten of his command, crossed the Sound in a government boat for the purpose of quelling certain Indian disturbances, and having successfully accomplished that object, and being on his return to the fort, the boat was cap-sized in a gale of wind, and Major Larnard, with eight of his men, drowned.

The petitioner has heretofore made application to the Commissioner of Pensions for relief, and been refused a pension on the ground that her case does not come within the strict letter of any pension act. The objections to the allowance of the claim by the Pension Office are set forth in a letter of the Commissioner of July 14, 1856, of which the following is an extract:

“The act of March 16, 1802, provides for a pension to the widow and children of a commissioned officer of the regular army of the United States dying in the service by reason of any wound received therein. The act of July 21, 1848, and subsequent acts in amendment thereof, provide, in substance, for a pension to the widow or children of officers or soldiers of the regular army dying of wounds received or disease contracted in service in the war with Mexico. The act of February 3, 1853, continues the pensions granted by the preceding acts mentioned, and extends them to the widows of those,

whether regulars or militia, dying from the causes specified, originating in the line of duty, in the war of 1812 and in the various Indian wars since 1790.

"There are other acts granting army pensions to widows and children, but they are confined to volunteer and militia forces, and do not embrace the regular army. Of such is the act of July 4, 1836, which extends to militia only.

"From the accompanying paper it appears that the death of Major Larnard occurred from the upsetting of a boat while he was crossing Pugets' Sound, in March, 1854, when he, with others, was drowned.

"The case does not fall within the provisions of the act of 1802, because the death was not from a wound; nor within the act of July 21, 1848, and subsequent acts in amendment thereof, because the cause of death did not originate in the war with Mexico; nor, finally, within the act of February 3, 1853, because the cause of death did not originate in the war of 1812, nor in any Indian war since 1790. And Major Larnard having been of the regular army, the case does not come within the various other acts relating to the militia."

There is no question but that Major Larnard was "in the line of duty" when the casualty occurred which caused his death. If his death had been caused by a "wound," his widow would have been clearly entitled to a pension.

Your committee are of opinion that, although his death by drowning may not bring the case within the strict letter of the law, yet it brings it within its equity and spirit. They therefore report a bill for the relief of the petitioner.

IN THE SENATE OF THE UNITED STATES.

JANUARY 18, 1859.—Ordered to be printed.

Mr. MALLORY submitted the following

REPORT.

The Committee on Naval Affairs, instructed by resolution to inquire into the expediency of providing for the construction of a supply of steam engines for a rapid and large increase of the navy, have had the subject under consideration, and report:

That the simultaneous construction and accumulation of a large number of engines for naval vessels would be inexpedient.

In no branch of mechanics are improvements being more frequently made than in the construction of boilers and machinery of ocean steamers; and it is the business of the Navy Department to watch their progress, to take advantage of every improvement, and to keep our war steamers fully up to the progress of the age. Naval steamers, too, in draft of water, armament, model, and the application of motive power, are constantly changing; and it would be inexpedient to accumulate any large number of engines which could be only applied to vessels under certain conditions. Engines which a few years ago were regarded as perfect, are now deemed antiquated and unfit for naval steamers.

Private workshops, if called into requisition, as they would be, in a naval war, are sufficient in number and possess the means of constructing as many engines as the country might require in addition to those constructed at the naval workshops. Some of those workshops may be specified. They are at Boston and Worcester, in Massachusetts; Providence, Rhode Island; Hartford and Bridgeport, Connecticut; New York, Cold Spring, and Buffalo, New York; Patterson and Jersey City, New Jersey; Philadelphia, Pittsburg, Erie, and Brownsville, Pennsylvania; Wilmington, Delaware; Baltimore, Maryland; Richmond, Norfolk, and Wheeling, Virginia; Wilmington, North Carolina; Charleston, South Carolina; Mobile and Montgomery, Alabama; New Orleans, Louisiana; Cincinnati, Ohio; Louisville, Kentucky, and New Albany and Madison, Indiana.

The navy yard at Washington, if properly fitted with machine shops, could manufacture, in six months, two engines for steam frigates of the largest class, or three for sloops-of-war; and the same may be

said of the yards at California, Portsmouth, Boston, New York, Philadelphia, Norfolk and Pensacola; and we may safely conclude that we have the means of constructing one hundred first class engines per annum.

For the foregoing reasons your committee ask to be discharged from the further consideration of the resolution submitted to them.

IN THE SENATE OF THE UNITED STATES.

JANUARY 19, 1859.—Ordered to be printed.

Mr. MALLORY made the following

R E P O R T .

[To accompany Bill S. 516.]

The Committee on Claims, to whom was referred the memorial of William C. Pease, of the United States revenue marine, have had the same under consideration, and report:

It appears from the proof submitted that the memorialist commanded the revenue cutter Jefferson Davis in 1854 and 1855, in Puget's Sound, Washington Territory; and, as disbursing agent of the ordinary expenses of his vessel, he deposited public money at various times in the banking-house of Adams & Co., of San Francisco, by the failure of which, in February, 1855, \$1,984 27 thus deposited were lost.

It further appears that this banking-house was in good standing; that the memorialist betrayed no want of due care or diligence in making the deposit, and that he has repaid the sum thus lost to the United States.

Your committee think the memorialist entitled to relief, and report a bill accordingly.

IN THE SENATE OF THE UNITED STATES.

JANUARY 20, 1859.—Ordered to be printed.

Mr. THOMSON, of New Jersey, made the following

REPORT.

[To accompany Bill S. 519.]

The Committee on Pensions, to whom was referred the petition of Ruth Ellen Greland, widow of Captain John H. Greland, deceased, late of the United States army, for a pension, having had the same under consideration, submit the following report:

It appears from the evidence before the committee that the petitioner was married to the late John H. Greland, at Boston, on the 30th day of November, 1850; that her said husband graduated at West Point, June 23, 1843, was appointed brevet second lieutenant February 17, 1845, and served without intermission since that time to the day of his decease; that he died in the discharge of his duties under the following peculiar circumstances, as set forth in a letter from the Commissioner of Pensions, dated December 21, 1858:

“Captain Greland was stationed at Fort Dulany, Punta Casa, Florida, where he was attacked with bilious remittent fever of a congestive form; there being no medical officer at the post, he did not receive medical treatment until the eighth day of his disease; that as soon as his case was reported he was visited by a medical officer, and soon after removed to Fort Myers, (August 14, 1857,) where he died on the 17th day of that month, being the 12th day of his sickness.”

As the general laws make no provision for the widows of officers of the United States army who die of disease in the service since the close of the late war with Mexico, your committee are of the opinion that the pension should be granted. They therefore report a bill for the relief of the petitioner.

IN THE SENATE OF THE UNITED STATES.

JANUARY 21, 1859.—Ordered to be printed.

Mr. THOMSON, of New Jersey, made the following

REPORT.

[To accompany bill S. 521.]

The Committee on Pensions, to whom was referred the petition of George Robbins, a private in company "G," fourth regiment of Ohio volunteers, in the late Mexican war, for a pension, having had the same under consideration, submit the following report:

It appears from the evidence before the committee that the petitioner served, as alleged, in the late war with Mexico, having been enlisted May, 1847, in company "G," 4th regiment of Ohio volunteers, and honorably discharged at the expiration of his term. That while in the service he contracted a disease called "Mexican diarrhoea," of which he has never since been cured, and which still continues so as to unfit him for earning his livelihood by his labor. These allegations are sustained by a number of affiants, among whom it is but necessary to mention Captain Irvine, who commanded petitioner's company, and Samuel Welch, a respectable practicing physician.

In consideration of these circumstances, your committee are of opinion that the pension should be granted; they therefore report a bill for the relief of the petitioner.

IN THE SENATE OF THE UNITED STATES.

JANUARY 24, 1859.—Ordered to be printed.

Mr. BAYARD made the following

REPORT

[To accompany Bill S. No. 233.]



The Committee on the Judiciary, to whom was referred Senate bill No. 233 for the relief of Samuel C. Phagin and others, have had the same under consideration, and submit the following report:

Richard Carter was (with other persons) in the month of October, 1855, arrested on a charge of an assault with intent to kill, and on the 13th of October, A. D. 1855, executed a bail bond to the United States before a United States commissioner in a penalty of \$1,500, conditioned for his personal appearance at the ensuing November term of the district court of the United States for the western district of Arkansas, to answer the said charge, if indicted. The sureties on this bond were N. B. Dennenburg, Samuel C. Phagin, G. T. Miller, and John A. Bell. The said Richard Carter failed to appear, though an indictment was found against him at the said November term, and his bail bond was forfeited on the 3d of December, 1855.

On the 27th of that month a *scire facias* was issued on the bond against Carter and his sureties, and at the November term, 1856, of said district court, a judgment was rendered by default against Carter and three of his sureties (the fourth not having been duly served with process) for the sum of \$500 and costs, the district judge in his discretion having remitted \$1,000 of the penalty. On this judgment an execution was subsequently issued into the western district of Texas, and the amount thereof was collected from John A. Bell, one of the sureties. A petition was presented to the President of the United States for a remission of this forfeiture in December, 1857, but the papers do not show what disposition was made of it by the Executive, though the presumption is that its prayer was refused. The bill referred to the committee was introduced into the Senate on the 8th of April, 1858, and its object is to release and discharge the defendants from the said judgment rendered against them in the district court of Arkansas for the abated penalty of the bail bond. If the defendants in the judgment are entitled to the relief contemplated in the bill, it must be shown that a debt, otherwise due to the United

States, ought not (from facts proved to the satisfaction of Congress) on some equitable principle to be enforced against them.

In the opinion of the committee they have failed to establish any equity whatever. The committee append to their report, as a part of it, a copy of the petition presented to the President; a copy of an affidavit of W. Walker, one of the attorneys of John A. Bell, and a letter from A. M. Wilson, United States attorney for the western district of Arkansas, dated May 11, 1858, addressed to the chairman in consequence of a letter of inquiry from him to Mr. Wilson; the statement of the district judge, of the same date, annexed to it, and also the certificate of A. J. Russell, marshal of the western district of Arkansas, with the corroborative certificate of Samuel C. Phagin, one of the defendants.

From these papers it appears that the relief prayed is asked for on the ground that Carter was tried at a subsequent term to the forfeiture of his recognizance, and acquitted; that one of the parties charged was tried and convicted at the November term, 1855, at which Carter failed to appear, but a new trial being granted, was acquitted at a subsequent term, and the proceedings against other parties abandoned.

The acquittal of Carter would afford some evidence of an equity in favor of the relief of the sureties, if the letter of Mr. Wilson did not show that the United States had but a single witness of the crime charged (McGrant, the party assaulted,) who was in attendance at the first term, and also at the second term for a few days, and then suddenly disappeared, and that after, but not before the disappearance of the witness, Carter presented himself for trial. The sudden disappearance of the witness is imputed by the district attorney to the agency of some of Carter's sureties, and though there is no positive evidence of such agency, it might be rationally inferred from the whole circumstances. The second equitable ground for release or discharge is the *alleged* fact that at the trial term of the *scire facias* on the bail bond, the attorneys of John A. Bell, in consequence of an agreement made by them with the district attorney that judgment should be rendered for costs alone, neglected to attend to the equitable defence which existed, by accounting for the absence of Carter at the November term, 1855, in consequence of sickness. This defence of sickness is the only one which it is alleged could have been made, and apart from it no ground is suggested upon which the defendants in the *scire facias* could have expected relief. The agreement alleged (improbable in itself) is positively denied by the district attorney in his letter to the chairman of the committee, and the alleged sickness of Carter is disproved, both by the certificate of the marshal and that of one of the sureties. The effect of a false allegation of fact as an equitable ground of defence and relief necessarily colors the whole case; and as it lies upon the parties asking relief to show a state of facts justifying the interposition of Congress, the falsity of the allegation of a material fact, which was known by the defendants to be false, destroys any reliance upon the other statements made by them. The impression made upon the committee

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by the whole evidence before them is that the witness upon whose testimony Carter's conviction was dependent was suddenly withdrawn by the procurement of one of the sureties, and that though diligently sought for his attendance could not be obtained, and thus the proper punishment for a violation of the criminal laws of the United States was eluded. The committee are of opinion, on the whole facts, that the bill ought not to be passed.

IN THE SENATE OF THE UNITED STATES.

JANUARY 24, 1859.—Ordered to be printed.

Mr. SLIDELL made the following

REPORT.

[To accompany Bill S. 497.]

The Committee on Foreign Relations, to whom was referred the bill (S. 497) "making appropriations to facilitate the acquisition of the island of Cuba, by negotiation," have had the same under consideration, and now respectfully report:

It is not considered necessary by your committee to enlarge upon the vast importance of the acquisition of the island of Cuba by the United States. To do so would be as much a work of supererogation as to demonstrate an elementary problem in mathematics, or one of those axioms of ethics or philosophy which have been universally received for ages. The ultimate acquisition of Cuba may be considered a fixed purpose of the United States, a purpose resulting from political and geographical necessities which have been recognized by all parties and all administrations, and in regard to which the popular voice has been expressed with a unanimity unsurpassed on any question of national policy that has heretofore engaged the public mind.

The purchase and annexation of Louisiana led, as a necessary corollary, to that of Florida, and both point with unerring certainty to the acquisition of Cuba. The sparse and feeble population of what is now the great west called in 1800 for the free navigation of the Mississippi, and the enforcement of the right of deposit at New Orleans. In three years not only were these privileges secured, but the whole of the magnificent domain of Louisiana was ours. Who now doubts the wisdom of a measure which at the time was denounced with a violence until then unparalleled in our political history?

From the day we acquired Louisiana the attention of our ablest statesmen was fixed on Cuba. What the possession of the mouth of the Mississippi had been to the people of the west that of Cuba became to the nation. To cast the eye upon the map was sufficient to predict its destiny. A brief reference will show the importance attached to the question by our leading statesmen, and the steadiness and perseverance with which they have endeavored to hasten the consummation of so vital a measure.

Mr. Jefferson in a letter to President Madison, of the 27th of April, 1809, speaking of the policy that Napoleon would probably pursue towards us, says:

"He ought to be satisfied with having forced her (Great Britain) to revoke the orders on which he pretended to retaliate, and to be particularly satisfied with us, by whose unyielding adherence to principle she has been forced into the revocation. He ought the more to conciliate our good will, as we can be such an obstacle to the new career opening on him in the Spanish colonies. That he would give us the Floridas to withhold intercourse with the residue of those colonies cannot be doubted. But that is no price, because they are ours in the first moment of the first war, and until a war they are of no particular necessity to us. But, although with difficulty, he will consent to our receiving Cuba into our Union, to prevent our aid to Mexico and the other provinces. That would be a price, and I would immediately erect a column on the southernmost limit of Cuba and inscribe on it a *ne plus ultra* as to us in that direction. We should then have only to include the north in our confederacy, which would be, of course, in the first war, and we should have such an empire for liberty as she has never surveyed since the creation; and I am persuaded no constitution was ever before so well calculated as ours for extensive empire and self-government. * * *

"It will be objected to our receiving Cuba that no limit can then be drawn to our future acquisitions. Cuba can be defended by us without a navy, and this develops the principle which ought to limit our views. Nothing should ever be accepted which would require a navy to defend it."

Again, in writing to President Monroe on the 23d June, 1823, he says: "For certainly her addition to our confederacy is exactly what is wanting to advance our power as a nation to the point of its utmost interest."

And in another letter to the same, on the 24th October, 1823, he says:

"I candidly confess that I have ever looked on Cuba as the most interesting addition which could ever be made to our system of States. The control which, with Florida Point, this island would give us over the Gulf of Mexico, and the countries and isthmus bordering on it, would fill up the measure of our political well being."

John Quincy Adams while Secretary of State under Mr. Monroe, in a despatch to Mr. Nelson, our minister at Madrid, of the 28th April, 1823, says:

"In the war between France and Spain, now commencing, other interests, peculiarly ours, will in all probability be deeply involved. Whatever may be the issue of this war as between those two European powers, it may be taken for granted that the dominion of Spain upon the American continents, north and south, is irrecoverably gone. But the islands of Cuba and Porto Rico still remain nominally and so far really dependent upon her, that she yet possesses the power of transferring her own dominion over them, together with the possession of them, to others. These islands, from their local position and

natural appendages to the North American continent, and one of them, Cuba, almost in sight of our shores, from a multitude of considerations, has become an object of transcendent importance to the commercial and political interests of our Union. Its commanding position, with reference to the Gulf of Mexico and the West India seas, the character of its population, its situation midway between our southern coast and the island of St. Domingo, its safe and capacious harbor of the Havana, fronting a long line of our shores destitute of the same advantage, the nature of its productions and of its wants, furnishing the supplies and needing the returns of a commerce immensely profitable and mutually beneficial, give it an importance in the sum of our national interests with which that of no other foreign territory can be compared and little inferior to that which binds the different members of this Union together. Such, indeed, are, between the interests of that island and of this country, the geographical, commercial, moral, and political relations formed by nature, gathering in the process of time, and even now verging to maturity, that, in looking forward to the probable course of events, for the short period of half a century, it is scarcely possible to resist the conviction that the annexation of Cuba to our federal republic will be indispensable to the continuance and integrity of the Union itself. It is obvious, however, that for this event we are not yet prepared. Numerous and formidable objections to the extension of our territorial dominions beyond sea, present themselves to the first contemplation of the subject: obstacles to the system of policy by which alone that result can be compassed and maintained, are to be foreseen and surmounted, both from at home and abroad; but there are laws of political as well as of physical gravitation; and if an apple, severed by the tempest from its native tree, cannot choose but fall to the ground, Cuba, forcibly disjoined from its own unnatural connexion with Spain, and incapable of self-support, can gravitate only towards the North American Union, which, by the same law of nature, cannot cast her off from its bosom.

"The transfer of Cuba to Great Britain would be an event unpromising to the interests of this Union. This opinion is so generally entertained, that even the groundless rumors that it was about to be accomplished, which have spread abroad, and are still teeming, may be traced to the deep and almost universal feeling of aversion to it, and to the alarm which the mere probability of its occurrence has stimulated. The question both of our right and of our power to prevent it, if necessary by force, already obtrudes itself upon our councils, and the administration is called upon, in the performance of its duties to the nation, at least to use all the means within its competency to guard against and forefend it."

On April 27, 1825, Mr. Clay, Secretary of State, in a despatch to Mr. A. H. Everett, our minister at Madrid, instructing him to use his exertions to induce Spain to make peace with her revolted colonies, says:

"The United States are satisfied with the present condition of those islands (Cuba and Porto Rico) in the hands of Spain, and with their ports open to our commerce, as they are now open. This gov-

ernment desires no political change of that condition. The population itself of the islands is incompetent at present, from its composition and its amount, to maintain self-government. The maritime force of the neighboring republics of Mexico and Colombia is not now, nor is it likely shortly to be, adequate to the protection of those islands, if the conquest of them were effected. The United States would entertain constant apprehensions of their passing from their possession to that of some less friendly sovereignty; and of all the European powers, this country prefers that Cuba and Porto Rico should remain dependent on Spain. If the war should continue between Spain and the new republics, and those islands should become the object and the theatre of it, their fortunes have such a connexion with the prosperity of the United States that they could not be indifferent spectators; and the possible contingencies of such a protracted war might bring upon the government of the United States duties and obligations the performance of which, however painful it should be, they might not be at liberty to decline."

Mr. Van Buren, writing to Mr. Van Ness, our minister to Spain, October 2, 1829, says:

"The government of the United States has always looked with the deepest interest upon the fate of those islands, but particularly of Cuba. Its geographical position, which places it almost in sight of our southern shores, and, as it were, gives it the command of the Gulf of Mexico and the West India seas, its safe and capacious harbors, its rich productions, the exchange of which, for our surplus agricultural products and manufactures, constitutes one of the most extensive and valuable branches of our foreign trade, render it of the utmost importance to the United States that no change should take place in its condition which might injuriously affect our political and commercial standing in that quarter. Other considerations, connected with a certain class of our population, make it the interest of the southern section of the Union that no attempt should be made in that island to throw off the yoke of Spanish dependence, the first effect of which would be the sudden emancipation of a numerous slave population, the result of which could not but be very sensibly felt upon the adjacent shores of the United States. On the other hand, the wisdom which induced the Spanish government to relax in its colonial system, and to adopt with regard to those islands a more liberal policy which opened their ports to general commerce, has been so far satisfactory in the view of the United States as, in addition to other considerations, to induce this government to desire that their possession should not be transferred from the Spanish crown to any other power. In conformity with this desire, the ministers of the United States at Madrid have, from time to time, been instructed attentively to watch the course of events and the secret springs of European diplomacy, which, from information received from various quarters, this government had reason to suspect had been put in motion to effect the transfer of the possession of Cuba to the powerful allies of Spain.

"You are authorized to say that the long established and well known

policy of the United States, which forbids their entangling themselves in the concerns of other nations, and which permits their physical force to be used only for the defence of their political rights and the protection of the persons and property of their citizens, equally forbids their public agents to enter into positive engagements, the performance of which would require the employment of means which the people have retained in their own hands ; but that this government has every reason to believe that the same influence which once averted the blow ready to fall upon the Spanish islands would again be found effectual on the recurrence of similar events ; and that the high preponderance in American affairs of the United States as a great naval power, the influence which they must at all times command as a great commercial nation, in all questions involving the interests of the general commerce of this hemisphere, would render their consent an essential preliminary to the execution of any project calculated so vitally to affect the general concerns of all the nations in any degree engaged in the commerce of America. The knowledge you possess of the public sentiment of this country in regard to Cuba will enable you to speak with confidence and effect of the probable consequences that might be expected from the communication of that sentiment to Congress, in the event of any contemplated change in the present political condition of that island."

And again, on the 13th of October, 1830: "This government has also been given to understand that, if Spain should persevere in the assertion of a hopeless claim to dominion over her former colonies, they will feel it to be their duty, as well as their interest, to attack her colonial possessions in our vicinity, Cuba and Porto Rico. Your general instructions are full upon the subject of the interest which the United States take in the fate of those islands, and particularly of the former; they inform you that we are content that Cuba should remain as it now is, but could not consent to its transfer to any European power. Motives of reasonable state policy render it more desirable to us that it should remain subject to Spain rather than to either of the South American States. Those motives will readily present themselves to your mind; they are principally founded upon an apprehension that, if possessed by the latter, it would, in the present state of things, be in greater danger of becoming subject to some European power than in its present condition. Although such are our own wishes and true interests, the President does not see on what ground he would be justified in interfering with any attempts which the South American States might think it for their interest, in the prosecution of a defensive war, to make upon the islands in question. If, indeed, an attempt should be made to disturb them, by putting arms in the hands of one portion of their population to destroy another, and which in its influence would endanger the peace of a portion of the United States, the case might be different. Against such an attempt the United States (being informed that it was in contemplation) have already protested and warmly remonstrated, in their communications last summer with the government of Mexico; but the information lately communicated to us in this regard was accompanied

by a solemn assurance that no such measures will, in any event, be resorted to; and that the contest, if forced upon them, will be carried on, on their part, with strict reference to the established rules of civilized warfare."

Mr. Buchanan, in his despatch to Mr. R. M. Saunders, of June 17, 1848, said: "With these considerations in view, the President believes that the crisis has arrived when an effort should be made to purchase the island of Cuba from Spain, and he has determined to intrust you with the performance of this most delicate and important duty. The attempt should be made, in the first instance, in a confidential conversation with the Spanish minister for foreign affairs; a written offer might produce an absolute refusal in writing, which would embarrass us hereafter in the acquisition of the island. Besides, from the incessant changes in the Spanish cabinet and policy, our desire to make the purchase might thus be made known in an official form to foreign governments, and arouse their jealousy and active opposition. Indeed, even if the present cabinet should think favorably of the proposition, they might be greatly embarrassed by having it placed on record; for in that event it would almost certainly, through some channel, reach the opposition and become the subject of discussion in the Cortes. Such delicate negotiations, at least in their incipient stages, ought always to be conducted in confidential conversation, and with the utmost secrecy and despatch."

"At your interview with the minister for foreign affairs you might introduce the subject by referring to the present distracted condition of Cuba, and the danger which exists that the population will make an attempt to accomplish a revolution. This must be well known to the Spanish government. In order to convince him of the good faith and friendship towards Spain with which this government has acted, you might read to him the first part of my despatch to General Campbell, and the order issued by the Secretary of War to the commanding general in Mexico and to the officer having charge of the embarkation of our troops at Vera Cruz. You may then touch delicately upon the danger that Spain may lose Cuba by a revolution in the island, or that it may be wrested from her by Great Britain, should a rupture take place between the two countries arising out of the dismissal of Sir Henry Bulwer, and be retained to pay the Spanish debt due to the British bond-holders. You might assure him that, whilst this government is entirely satisfied that Cuba shall remain under the dominion of Spain, we should in any event resist its acquisition by any other nation. And, finally, you might inform him that, under all these circumstances, the President had arrived at the conclusion that Spain might be willing to transfer the island to the United States for a fair and full consideration. You might cite as a precedent the cession of Louisiana to this country by Napoleon, under somewhat similar circumstances, when he was at the zenith of his power and glory. I have merely presented these topics in their natural order, and you can fill up the outline from the information communicated in this despatch, as well as from your own knowledge of the subject. Should the minister for foreign affairs lend a favorable ear to your proposi-

tion, then the question of the consideration to be paid would arise, and you have been furnished with information in this despatch which will enable you to discuss that question.

“The President would be willing to stipulate for the payment of one hundred millions of dollars. This, however, is the maximum price; and if Spain should be willing to sell, you will use your best efforts to purchase it at a rate as much below that sum as practicable. In case you should be able to conclude a treaty, you may adopt as your model, so far as the same may be applicable, the two conventions of April 30, 1803, between France and the United States, for the sale and purchase of Louisiana. The seventh and eighth articles of the first of these conventions ought, if possible, to be omitted; still, if this should be indispensable to the accomplishment of the object, articles similar to them may be retained.”

Mr. Everett, in his celebrated letter of December 1, 1852, to the Comte de Sartiges, rejecting the joint proposition of the French and British governments for a tripartite convention with the United States, disclaiming, severally and collectively, all intention to obtain possession of the island of Cuba, and respectively binding themselves to discountenance all attempts to that effect on the part of any power or individuals whatever, said:

“Spain, meantime, has retained of her extensive dominions in this hemisphere but the two islands of Cuba and Porto Rico. A respectful sympathy with the fortunes of an ancient ally and a gallant people, with whom the United States have ever maintained the most friendly relations, would, if no other reason existed, make it our duty to leave her in the undisturbed possession of this little remnant of her mighty trans-Atlantic empire. The President desires to do so. No word or deed of his will ever question her title or shake her possession. But can it be expected to last very long? Can it resist this mighty current in the fortunes of the world? Is it desirable that it should do so? Can it be for the interest of Spain to cling to a possession that can only be maintained by a garrison of twenty-five or thirty thousand troops, a powerful naval force, and an annual expenditure for both arms of the service of at least twelve millions of dollars? Cuba, at this moment, costs more to Spain than the entire naval and military establishment of the United States costs the federal government. So far from being really injured by the loss of this island, there is no doubt that, were it peacefully transferred to the United States, a prosperous commerce between Cuba and Spain, resulting from ancient associations and common language and tastes, would be far more productive than the best contrived system of colonial taxation. Such, notoriously, has been the result to Great Britain of the establishment of the independence of the United States. The decline of Spain from the position which she held in the time of Charles the Fifth is coeval with the foundation of her colonial system; while within twenty-five years, and since the loss of most of her colonies, she has entered upon a course of rapid improvement unknown since the abdication of that emperor.”

Mr. Marcy, in his despatch of July 23, 1853, to Mr. Pierre Soulé says:

"SIR: There are circumstances in the affairs of Spain, having a connexion with this country, which give unusual importance at this time to the mission to that government. The proximity of her remaining possessions in this hemisphere—the islands of Cuba and Porto Rico—to the United States, the present condition of the former, and the rumors of contemplated changes in its internal affairs, complicate our relations with Spain. The island of Cuba, on account of its magnitude, situation, fine climate, and rich productions, far superior in all respects to any in the West India group, is a very desirable possession to Spain, and, for the same reasons, very difficult for her to retain in its present state of dependence. The opinion generally prevails among the European nations that the Spanish dominion over it is insecure. This was clearly evinced by the alacrity with which both England and France, on occasion of the late disturbances in Cuba, volunteered their aid to sustain the Spanish rule over it, and by their recent proposition to the United States for a tripartite convention to guaranty its possession to Spain. Without an essential change in her present policy, such a change as she will most likely be unwilling to make, she cannot, it is confidently believed, long sustain, unaided, her present connexion with that island.

"What will be its destiny after it shall cease to be a dependency of Spain is a question with which some of the principal powers of Europe have seen fit to concern themselves, and in which the United States have a deep and direct interest.

"I had occasion recently, in preparing instructions for our minister to London, to present the views of the President in relation to the interference of Great Britain, as well as of France, in * * *

* * * Cuban affairs. To spare myself the labor of again going over the same ground, I herewith furnish you with an extract from those instructions.

"The policy of the government of the United States in regard to Cuba, in any contingency calling for our interposition, will depend, in a great degree, upon the peculiar circumstances of the case, and cannot, therefore, now be presented with much precision beyond what is indicated in the instructions before referred to. Nothing will be done, on our part, to disturb its present connexion with Spain, unless the character of that connexion should be so changed as to affect our present or prospective security. While the United States would resist, at every hazard, the transference of Cuba to any European nation, they would exceedingly regret to see Spain resorting to any power for assistance to uphold her rule over it. Such a dependence on foreign aid would, in effect, invest the auxiliary with the character of a protector, and give it a pretext to interfere in our affairs, and also generally in those of the North American continent. In case of collision with the United States, such protecting power would be in a condition to make nearly the same use of that island to annoy us as it could do if it were the absolute possessor of it.

"Our minister at Madrid, during the administration of President Polk, was instructed to ascertain if Spain was disposed to transfer

Cuba to the United States for a liberal pecuniary consideration. I do not understand, however, that it was at that time the policy of this government to acquire that island unless its inhabitants were very generally disposed to concur in the transfer. Under certain conditions the United States might be willing to purchase it; but it is scarcely expected that you will find Spain, should you attempt to ascertain her views upon the subject, at all inclined to enter into such a negotiation. There is reason to believe that she is under obligations to Great Britain and France not to transfer this island to the United States. Were there nothing else to justify this belief but the promptness with which these two powers sent their naval forces to her aid in the late Cuban disturbances, the proposition for a tripartite convention to guaranty Cuba to Spain, and, what is more significant than either of the above facts, the sort of joint protest by England and France, to which I adverted in my instructions to Mr. Buchanan, against some of the views presented in Mr. Everett's letter of the 2d of December last to Mr. Sartiges, the French minister, would alone be satisfactory proof of such an arrangement. Independent of any embarrassment of this nature, there are many other reasons for believing that Spain will pertinaciously hold on to Cuba, and that the separation, whenever it takes place, will be the work of violence."

From these and other extracts that might be presented it is manifest that the ultimate acquisition of Cuba has long been regarded as the fixed policy of the United States—necessary to the progressive development of our system. All agree that the end is not only desirable but inevitable. The only difference of opinion is as to the time, mode, and conditions of obtaining it.

The law of our national existence is growth. We cannot, if we would, disobey it. While we should do nothing to stimulate it unnaturally, we should be careful not to impose upon ourselves a regimen so strict as to prevent its healthful development. The tendency of the age is the expansion of the great powers of the world. England, France, and Russia, all demonstrate the existence of this pervading principle. Their growth, it is true, only operates by the absorption, partial or total, of weaker powers—generally, of inferior races. So long as this extension of territory is the result of geographical position, a higher civilization, and greater aptitude for government, and is not pursued in a direction to endanger our safety or impede our progress, we have neither the right nor the disposition to find fault with it. Let England pursue her march of conquest and annexation in India, France extend her dominions on the southern shores of the Mediterranean, and advance her frontiers to the Rhine, or Russia subjugate her barbarous neighbors in Asia; we shall look upon their progress, if not with favor, at least with indifference. We claim on this hemisphere the same privilege that they exercise on the other—

"Hanc veniam petimusque damusque vicissim."

In this they are but obeying the laws of their organization. When they cease to grow they will soon commence that period of decadence which is the fate of all nations as of individual man.

The question of the annexation of Cuba to the United States, we

repeat, is a question but of time. The fruit that was not ripe when John Quincy Adams penned his despatch to Mr. Forsyth, (it has not yet been severed by violence from its native tree, as he anticipated,) is now mature. Shall it be plucked by a friendly hand, prepared to compensate its proprietor with a princely guerdon? or shall it fall decaying to the ground?

As Spain cannot long maintain her grasp on this distant colony, there are but three possible alternatives in the future of Cuba: First, possession by one of the great European powers. This we have declared to be incompatible with our safety, and have announced to the world that any attempt to consummate it will be resisted by all the means in our power. When first we made this declaration we were comparatively feeble. The struggle would have been fearful and unequal; but we were prepared to make it at whatever hazard. That declaration has often been repeated since. With a population nearly tripled, our financial resources and our means, offensive and defensive, increased in an infinitely larger proportion, we cannot now shrink from an issue that all were then ready to meet.

The second alternative is the independence of the island. This independence could only be nominal; it never could be maintained in fact. It would eventually fall under some protectorate, open or disguised. If under ours, annexation would soon follow as certainly as the shadow follows the substance. An European protectorate could not be tolerated. The closet philanthropists of England and France would, as the price of their protection, insist upon introducing their schemes of emancipation. Civil and servile war would soon follow, and Cuba would present, as Hayti now does, no traces of its former prosperity, but the ruins of its once noble mansions. Its uncontrolled possession by either France or England would be less dangerous and offensive to our southern States than a pretended independent black empire or republic.

The third and last alternative is annexation to the United States. How and when is this to be effected? By conquest or negotiation? Conquest, even without the hostile interference of another European power than Spain, would be expensive, but with such interference would probably involve the whole civilized world in war, entail upon us the interruption, if not the loss, of our foreign trade, and an expenditure far exceeding any sum which it has ever been contemplated to offer for the purchase of Cuba. It would, besides, in all probability, lead to servile insurrection, and to the great injury or even total destruction of the industry of the island. Purchase, then, by negotiation seems to be the only practicable course; and, in the opinion of the committee, that cannot be attempted with any reasonable prospect of success, unless the President be furnished with the means which he has suggested in his annual message, and which the bill proposes to give him.

Much has been said of the danger of confiding such powers to the Executive, and from the fierceness with which the proposition has been denounced, it might be supposed that it was without precedent. So far is this from being the case, that we have three different acts upon the statute-book, placing large sums of money at the disposition of

the President for the purpose of aiding him in negotiations for the acquisition of territory. The first is the act of February 26, 1803. Although its object was well known, viz: to be used in negotiating for the purchase of Louisiana, the act does not indicate it. It placed two millions of dollars unreservedly at the disposition of the President, for the purpose of defraying any "extraordinary expense which may be incurred in the intercourse between the United States and foreign nations." Second. The act of February 13, 1806, using precisely the same phraseology, appropriates two millions of dollars, it being understood that it was to be used in negotiating for the purchase of Florida.

The act of 3d March, 1847, "making further appropriation to bring the existing war with Mexico to a speedy and honorable conclusion," has been adopted as the model on which the present bill is framed. Its preamble states that "whereas, in the adjustment of so many complicated questions as now exist between the two countries, it may possibly happen that an expenditure of money will be called for by the stipulations of any treaty which may be entered into, therefore the sum of three millions of dollars be, and the same is hereby, appropriated, to enable the President to conclude a treaty of peace, limits, and boundaries, with the republic of Mexico; to be used by him in the event said treaty, when signed by the authorized agents of the two governments and duly ratified by Mexico, shall call for the expenditure of the same, or any part thereof." The bill now reported, appropriates, under the same conditions, thirty millions of dollars to make a treaty with Spain for the purchase of the island of Cuba.

It will be perceived that this bill defines strictly the object to which the amount appropriated shall be applied; and in this respect allows a much narrower range of discretion to the present executive than the acts of 1803, and 1806, gave to Mr. Jefferson. In those cases the object of the appropriation was as well known to the country and to the world, as if it had been specifically stated. The knowledge of that fact did not then in the slightest degree tend to defeat the intended object, nor can it do so now. Under our form of government we have no state secrets. With us, diplomacy has ceased to be enveloped with the mysteries that of yore were considered inseparable from its successful exercise. Directness in our policy, and frankness in its avowal, are in conducting our foreign intercourse not less essential to the maintenance of our national character and the permanent interests of the republic than are the same qualities to social position and the advancement of honest enterprise in private life.

Much has been said of the indelicacy of this mode of proceeding. That the offer to purchase will offend the Spanish pride, be regarded as an insult, and rejected with contempt. That instead of promoting a consummation that all admit to be desirable, it will have the opposite tendency. If this were true it would be a conclusive argument against the bill, but a brief consideration will show the fallacy of these views. For many years our desire to purchase Cuba has been known to the world. Seven years since President Fillmore communicated to Congress the instructions to our ministers on that subject, with all the correspondence connected with it. In that correspondence will

be found three letters from Mr. Saunders, detailing conversations held with Narvaez and the minister of foreign relations, in which he notified them of his authority to treat for the purchase of Cuba, and while the reply was so decided as to preclude him from making any direct proposition, yet no intimation was given that the suggestion was offensive. And why should it be so? We simply say to Spain, you have a distant possession, held by a precarious tenure, which is almost indispensable to us for the protection of our commerce, and may, from its peculiar position, the character of its population, and the mode in which it is governed, lead, at any time, to a rupture which both nations would deprecate. This possession, rich though it be in all the elements of wealth, yields to your treasury a net revenue not amounting, on the average of a series of years, to the hundredth part of the price we are prepared to give you for it. True, you have heretofore refused to consider our proposition, but circumstances are changing daily. What may not have suited you in 1848 may now be more acceptable. Should a war break out in Europe, Spain can scarcely hope to escape being involved in it. The people of Cuba naturally desire to have a voice in the government of the island. They may seize the occasion to proclaim their independence, and you may regret not having accepted the rich indemnity we offer.

But even these arguments will not be pressed upon unwilling ears. Our minister will not broach the subject until he shall have good reason to believe that it will be favorably entertained. Such an opportunity may occur when least expected. Spain is the country of *coups-d'etat* and pronunciamientos. The all-powerful minister of to-day may be a fugitive to-morrow. With the forms of a representative government, it is, in fact, a despotism sustained by the bayonet. A despotism tempered only by frequent, violent, and bloody revolutions. Her financial condition is one of extreme embarrassment. A crisis may arise when even the dynasty may be overthrown unless a large sum of money can be raised forthwith. Spain will be in the position of the needy possessor of land he cannot cultivate, having all the pride of one to whom it has descended through a long line of ancestry, but his necessities are stronger than his will; he must have money. A thrifty neighbor whose domains it will round off is at hand to furnish it. He retains the old mansion, but sells what will relieve him from immediate ruin.

The President, in his annual message, has told us that we should not, if we could, acquire Cuba by any other means than honorable negotiation, unless circumstances which he does not anticipate render a departure from such a course justifiable, under the imperative and overruling law of self preservation. He also tells us that he desires to renew the negotiations, and it may become indispensable to success that he should be intrusted with the means for making an advance to the Spanish government immediately after the signing of the treaty, without awaiting the ratification of it by the Senate. This, in point of fact, is an appeal to Congress for an expression of its opinion on the propriety of renewing the negotiation. Should we fail to give him the means which may be indispensable to success, it may well be con-

sidered by the President as an intimation that we do not desire the acquisition of the island.

It has been asserted that the people of Cuba do not desire a transfer to the United States. If this were so it would present a very serious objection to the measure. The evidence on which it is based is, that on the receipt of the President's message, addresses were made by the municipal authorities of Havana, and other towns, protesting their devotion to the crown, and their hostility to the institutions of the United States. Any one who has had an opportunity of observing the persuasive influence of the bayonet in countries where it rules supreme will know how much value to attach to such demonstrations of popular sentiment. There can be no doubt that an immense majority of the people of Cuba are not only in favor, but ardently desirous of annexation to the United States. It would be strange indeed, if they were not so; deprived of all influence even in the local affairs of the island—unrepresented in the Cortes—governed by successive hordes of hungry officials sent from the mother country to acquire fortunes to be enjoyed at home, having no sympathy with the people among whom they are mere sojourners, and upon whom they look down as inferiors; liable to be arrested at any moment on the most trifling charges; tried by military courts or submissive judges, removable at pleasure, punished at the discretion of the captain general, they would be less than men if they were contented with their yoke. But we have the best authority from the most reliable sources, for asserting that nearly the entire native population of Cuba desires annexation.

Apprehensions have been expressed by some southern statesmen, of perils resulting from the different elements composing the population, and the supposed mixture of races. They are not justified by the facts. The entire population, by the census of 1850, was 1,247,230, of which 605,560 were whites, 205,570 free colored, and 436,100 slaves.

Allowing the same annual percentage of increase for each class, as shown by comparison with the previous census, the total population now is about 1,586,000, of which 742,000 are whites, 263,000 free colored, and 581,000 slaves. There is good reason to suppose that the slaves considerably exceed the estimated number, it having been, until very recently, the interest of the proprietor to under state it. The feeling of caste or race, is as marked in Cuba as in the United States. The white creole is as free from all taint of African blood as the descendant of the Goth on the plains of Castile. There is a numerous white peasantry, brave, robust, sober, and honest, not yet perhaps prepared intelligently to discharge all the duties of the citizen of a free republic, but who, from his organization physical and mental, is capable of being elevated by culture to the same level with the educated Cubans, who, as a class, are as refined, well-informed, and fitted for self-government as men of any class of any nation can be who have not inhaled with their breath the atmosphere of freedom.

Many of them accompanied by their families are to be met with every summer at our cities and watering places, observing and appreciating the working of our form of government and its marvelous results; many seeking until the arrival of more auspicious days an

asylum from the oppression that has driven them from their homes ; while hundreds of their youths in our schools and colleges are acquiring our language and fitting themselves hereafter, it is to be hoped, at no distant day, to play a distinguished part in their own legislative halls, or in the counsels of the nation.

These men, who are the great proprietors of the soil, are opposed to the continuance of the African slave trade, which is carried on by Spaniards from the peninsula, renegade Americans, and other adventurers from every clime and country, tolerated and protected by the authorities of Cuba of every grade.

Were there a sincere desire to arrest the slave trade, it could be as effectually put down by Spain as it has been by Brazil. Cuba and Porto Rico are now the only marts for this illegal traffic; and if the British government had been as intent upon enforcing its treaty stipulations with Spain for its abolition as it has been in denouncing abuses of our flag, which we cannot entirely prevent, this question would long since have ceased to be a source of irritating discussion, it may be of possible future difficulty. Those who desire to extirpate the slave trade may find in their sympathy for the African a motive to support this bill.

We have, since the conclusion of the Ashburton treaty in 1842, kept up a squadron on the coast of Africa for the suppression of the slave trade, and we are still bound to continue it. The annual cost of this squadron is at least \$800,000. The cost in seventeen years amounts to \$13,600,000, (thirteen millions six hundred thousand dollars;) and this, too, with results absolutely insignificant. It appears, from a report of a select committee of the British House of Commons, made in March, 1850, that the number of slaves exported from Africa had sunk down in 1842, (the very year in which the Ashburton treaty was concluded,) to nearly 30,000. In 1843 it rose to 55,000. In 1846 it was 76,000; in 1847 it was 84,000, and was then in a state of unusual activity. Sir Charles Hotham, one of the most distinguished officers of the British navy, and who commanded on the coast of Africa for several years, was examined by that select committee. He said that the force under his command was in a high state of discipline; that his views were carried out by his officers to his entire satisfaction; that, so far from having succeeded in stopping the slave trade, he had not even crippled it to the extent of giving it a permanent check; that the slave trade had been regulated by the commercial demand for slaves, and had been little affected by the presence of his squadron, and that experience had proven the system of repression by cruisers on the coast of Africa futile—this, too, when the British squadron counted twenty-seven vessels, comprising several steamers, carrying about three hundred guns and three thousand men. The annual expense of the squadron is about \$3,500,000, with auxiliary establishments on the coast costing at least \$1,500,000 more—a total cost annually of five millions of dollars in pursuance of a system which experience has proved to be futile.

In 1847 the Brazilian slave trade was in full activity. It has been entirely suppressed for several years. The slaves now shipped from

the coast of Africa are exclusively for the Spanish islands. It is not easy to estimate the number. From the best data, however, it is supposed now to be from twenty-five to thirty thousand per year. It would cease to exist the moment we acquire possession of the Island of Cuba.

The importation of slaves into the United States was prohibited in 1808. Since then, a period of more than fifty years, but one case has occurred of its violation—that of the *Wanderer*, which has recently excited so much attention.

Another consequence which should equally enlist the sympathies of philanthropists, excepting that class whose tears are only shed for those of ebon hue, and who turn with indifference from the sufferings of men of any other complexion, is the suppression of the infamous Coolie traffic—a traffic so much the more nefarious as the Chinese is elevated above the African in the scale of creation; more civilized, more intellectual, and therefore feeling more acutely the shackles of the slave ship and the harsh discipline of the overseer. The number of Chinese shipped for Cuba since the commencement of the traffic up to March last, is 28,777; of whom 4,134 perished on the passage. From that date up to the close of the year the number landed at Havana was 9,449. We blush to say that three-fourths of the number were transported under the American and British flags—under the flags of the two countries that have been the most zealous for the suppression of the African slave trade. The ratio of mortality on the passage was $14\frac{3}{4}$ per cent., and a much larger proportion of these wretched beings were landed in an enfeebled condition. Coming, too, from a temperate climate, they are not capable of enduring the exposure to the tropical sun, in which the African delights to bask. When their allotted time of service shall have been completed, the small remnant of the survivors will furnish conclusive evidence of the barbarity with which they are treated. The master feels no interest in his temporary slave beyond that of extracting from him the greatest possible amount of labor during the continuance of his servitude. His death, or incapacity to labor at the end of his term, is to the master a matter of as much indifference as is the fate of the operative employed in his mill to the Manchester spinner.

Another effect of this measure, which should recommend it most strongly to the humanitarians, will be the better treatment and increased happiness of the slaves now existing in the island that would inevitably flow from it. As a general rule, the slave is well treated in proportion to his productiveness and convertible value; as an expensive instrument is more carefully handled than one of less cost. When the importation of slaves from abroad is arrested, the home production affords the only means of supplying the increasing demand for labor. It may be assumed as an axiom of political economy that the increase of population, if not the only true test, is the most reliable of the average well-being of the class to which it is applied. Tried by this test, the slave of the United States affords a very high standard as compared even with the white population of our favored land. But when comparison

is made with the statistics of African slavery in all European colonies, the results are startling. Since Las Casas, in his zeal for the protection of the Indian, originated the African slave trade, it is estimated that the whole number transported to the new world has been about 8,375,000. Of these, we, in our colonial condition, and since, have only received about 375,000. By natural increase, after deducting all who are free, we had, in 1850, 3,204,000 slaves of the African race. These, allowing the same per centage of increase for nine years, as the census returns show during the last decennial period, would now number over 4,300,000; while, from the same data, the free colored population would amount to 496,000. The British West India colonies received about 1,700,000. The whole population of those Islands, including Jamaica and Trinidad acquired from the Spaniards, and British Guiana, black, white and mixed, is but 1,062,639. The Spanish and other West India Islands received about 3,000,000. This is very much more than their entire population to-day. The proportion may vary in some of the colonies, but the general result will be found everywhere the same. A very much less number now existing of African descent, either pure or mixed, than have been imported from Africa.

There is another aspect in which this proposition may be viewed which is deserving of serious consideration. It is forcibly put in the President's annual message that the multiplied aggressions upon the persons and property of our citizens by the local authorities of Cuba for many years past present, in the person of the captain-general, the anomaly of absolute power to inflict injury without any corresponding faculty to redress it. He can, almost in sight of our shores, confiscate, without just cause, the property of an American citizen, or incarcerate his person; but if applied to for redress, we are told that he cannot act without consulting his royal mistress, at Madrid. There we are informed that it is necessary to await the return of a report of the case which is to be obtained from Cuba; and many years elapse before it is ripe for decision. These delays in most instances amount to an absolute denial of justice. And even when the obligation of indemnity is admitted, the state of the treasury or a change of ministry is pleaded as an excuse for withholding payment. This would long since have justified us in resorting to measures of reprisal that would have necessarily led to war and ultimately resulted in the conquest of the island. Indeed such is the acute sense of those wrongs prevailing among our people, that nothing but our rigid neutrality laws, which, so long as they remain unrepealed or unmodified, a chief magistrate, acting under the sanction of his official oath to see that the laws be faithfully executed, is bound to enforce, has prevented the success of organized individual enterprises that would long ere this have revolutionized the island. It is in part, probably, for this cause that the President has recommended the policy which this bill embodies, and the world cannot fail to recognize in its adoption by Congress a determination to maintain him in his efforts to preserve untarnished our national character for justice and fair dealing.

The effects of the acquisition of Cuba will be no less beneficial in its

commercial, than in its political and moral aspects. The length of the Island is about seven hundred and seventy miles, with an average breadth of about forty miles, comprising an area of 31,468 square miles. The soil is fertile, climate genial, and its ports the finest in the world. Havana is more familiarly known to us, for apart from our extensive trade, which employs several hundred American vessels, thousands of our citizens have touched at that port in our steamers on their way to California or New Orleans. They have all carried away with them vivid recollections of its magnificent harbor, and have breathed ardent prayers that their next visit should be hailed by the stars and stripes floating from the Moro. And yet Cuba can boast of several other harbors equally safe and more extensive than that of Havana.

In 1855 the importations, by official custom-house returns, were \$31,216,000, the exports \$34,803,000. As duties are levied on exports as well as imports, there can be no exaggeration in these returns, and the real amount is undoubtedly considerably larger.

When we consider that more than two-thirds of the whole area of the island is susceptible of culture, and that not a tenth part of it is now cultivated, we may form some idea of the immense development which would be given to its industry by a change from a system of monopoly and despotism to free trade and free institutions. Whatever may be the enhanced cost of production, caused by the increased value of labor, it will be nearly if not quite compensated by the removal of export duties; and of those levied on articles produced in the United States, which are now by unjust discrimination virtually excluded from consumption. It is not possible within the limits which your committee have prescribed to themselves for this report to cite more than a few of the most important. Of flour, on an average of three years, from 1848 to 1850, there were imported from the United States 5,642 barrels, paying a duty of \$10 81 per barrel. From other countries, and it is believed exclusively from Spain, 228,002 barrels, paying a duty of \$2 52 per barrel, a discrimination against our flour of nearly two hundred per cent. on its present average value in our markets. On lard, of which the importation from the United States was 10,168,000 pounds, a duty is levied of \$4 per quintal, while of olive oil 8,481,000 pounds were imported, which is chiefly used as its substitute, paying a duty of 87 cents per quintal. Of beef, dry and jerked, but 339,161 pounds were imported from the United States paying a duty of \$1 96 per quintal, while the importation from other quarters, principally from Buenos Ayres, was 30,544,000 pounds paying a duty of \$1 17. the difference being, in fact, a protection of the Spanish flag, which thus enjoys a monopoly of this branch of trade. To-day, with its increased population and wealth it is fair to presume that, were Cuba annexed to the United States, with the stimulus afforded by low prices, her annual consumption of our flour would be 600,000 barrels; of our lard, 25,000,000 pounds; of our beef, 20,000,000, and of pork, the most solid and nutritious food for the laborer 10,000,000 of pounds. The same ratio of increase would be exhibited in our whole list of exports. Many

articles that now appear not at all or in very limited quantities would force their way into general consumption. The Spanish flag, deprived of the advantage of discriminating duties of tonnage and impost, would soon abandon a competition which it could not sustain on equal terms, and the whole carrying trade, foreign and domestic, would fall into the hands of our enterprising merchants and ship owners, but chiefly those of the northern and middle States, while the farmer of the west would have a new and constantly increasing market open to him for the products of the soil. With all the disadvantages under which we now labor, the American vessels entering the port of Havana alone last year numbered nine hundred and fifty-eight, with a tonnage of four hundred and three thousand four hundred and seventy-nine, (403,479.) To what figure will this be extended when ours shall be the national flag of Cuba?

The cultivation of sugar is the chief basis of the wealth and prosperity of Cuba. The average annual production, exclusive of what is consumed in the island, is about 400,000 tons; that of Louisiana about 175,000 tons. The whole amount of cane sugar from which Europe and the United States are supplied is estimated at 1,273,000 tons; of this, Cuba and Louisiana now furnish somewhat more than 45 per cent. Is it extravagant to predict that, with Cuba annexed, we should in a few years have as complete control of this great staple—which has long since ceased to be a luxury, and become almost a necessity of life—as we now have of cotton?

There is one other consideration, of minor importance when compared with the vast political interests involved in the question of acquisition; it is that of cost. Ten years past, as appears from the published correspondence, our minister at Madrid was authorized to offer one hundred millions of dollars as the extreme price for the purchase of Cuba. If that was its value then, something may be added to it now. Assuming it to be twenty-five millions more, the annual interest, without reference to the probable premium which would be realized from a loan, bearing five per cent. interest, would be (\$6,250,000) six million two hundred and fifty thousand dollars. Of the imposts of (\$31,216,000) thirty-one millions two hundred and sixteen thousand dollars in 1856, your committee have not before them the means of ascertaining the proportion coming from the United States. From the summary of *Balanzas Generales* from 1848 to 1854, in the report of *Commercial Relations*, vol. 1, page 187, it may, however, be fairly assumed to be somewhat more than one-fourth, or about eight millions of dollars. This proportion would doubtless be largely increased. Admitting it to be (\$16,216,000) sixteen millions two hundred and sixteen thousand dollars, it would leave a balance of (\$15,000,000) fifteen millions of dollars on which duties could be levied. Under our present tariff the average rate of duties is about 18½ per cent; but as the articles on our free list are of very limited consumption in Cuba, the average there would be at least 20 per cent. This would yield a revenue from customs of (\$3,000,000) three millions of dollars. But under the stimulus of free trade and free institutions, with the removal of many burdens from the consumer, it would necessarily be greatly and speedily

augmented. It would be a moderate calculation to say that in two years it would reach four millions of dollars (\$4,000,000.) On the other hand, it may be said that our expenditure would be largely increased. Such is not the opinion of your committee. On the contrary, it is believed that from the greater security of our foreign relations, resulting from the settlement of this long agitated and disturbing question, our naval expenditure might be safely reduced, while no addition to our military establishment would be required. It has already been shown that an annual saving of eight hundred thousand dollars (\$800,000) may be effected by withdrawing the African squadron, when its services will no longer be necessary. Thus our expenditure for the interest on the debt incurred by the acquisition would be credited by four million eight hundred thousand dollars, (\$4,800,000,) leaving an annual balance of but one million four hundred and twenty-five thousand dollars (\$1,425,000) to the debit of the purchase. Is this sum to be weighed in the balance with the advantages, political and commercial, which would result from it? Your committee think that it should not.

A few words on the wealth and resources of Cuba, and your committee will close this report, which has swollen to dimensions not incommensurate with the importance of the subject, but which, it may be feared, will, under the pressure of other business during this short session, be considered as unduly trespassing on the attention of the Senate. The amount of taxes that can be levied upon any people, without paralyzing their industry and arresting their material progress, is the *experimentum crucis* of the fertility of the land they inhabit. Tried by this test, Cuba will favorably compare with any country on either side of the Atlantic.

Your committee have before them the last Cuban Budget, which presents the actual receipts and expenditures for one year, with the estimates for the same for the next six months. The income derived from direct taxes, customs, monopolies, lotteries, &c., is sixteen million three hundred and three thousand nine hundred and fifty dollars, (\$16,303,950.) The expenses are sixteen million two hundred and ninety-nine thousand six hundred and sixty-three dollars, (\$16,299,663.) This equilibrium of the Budget is accounted for by the fact that the surplus revenue is remitted to Spain. It figures under the head of "*Atenciones de la Peninsula*," and amounts to (\$1,404,059,) one million four hundred and four thousand and fifty-nine dollars, and is the only direct pecuniary advantage Spain derives from the possession of Cuba, and even this sum very much exceeds the average net revenue remitted from that island, all the expenses of the army and navy employed at or near Cuba being paid by the island. The disbursements are those of the general administration of the island, those of Havana and other cities being provided for by special imposts and taxes.

It may be moderately estimated that the personal exactions of Spanish officials amount to five millions of dollars (\$5,000,000) per annum, thus increasing the expenses of the government of Cuba, apart from those which, with us, would be considered as county or

municipal, to the enormous sum of twenty-one million three hundred thousand dollars, (\$21,300,000,) or about thirteen dollars and fifty cents (\$13 50) per head for the whole population of the island, free and slave. Under this system of government and this excessive taxation the population has, for a series of years, steadily increased at the mean rate of three per cent. per annum, about equal to that of the United States.

Since the reference of the bill to the committee, the President, in response to a resolution of the Senate requesting him, if not incompatible with the public interest, to communicate to the Senate any and all correspondence between the government of the United States and the government of her Catholic Majesty relating to any proposition for the purchase of the island of Cuba, which correspondence has not been furnished to either House of Congress, informs us that no such correspondence has taken place which has not already been communicated to Congress. He takes occasion to repeat what he said in his annual message, that it is highly important, if not indispensable to the success of any negotiation for the purchase, that the measure should receive the previous sanction of Congress.

This emphatic reiteration of his previous recommendation throws upon Congress the responsibility of failure if withheld. Indeed, the inference is sufficiently clear that, without some expression of opinion by Congress, the President will not feel justified in renewing negotiations.

The committee beg leave to append hereto various tables concerning statistical details of matters treated of in this report.

All which is respectfully submitted.

No. 1.

Commerce of the Island of Cuba with foreign nations for the years 1852, 1853, and 1854, made up from the "general balances."

[From Ex. Doc. No. 107, 1st session 34th Congress, Commercial Relations of the United States.]

Countries.	1852.		1853.		1854.	
	Imports.	Exports.	Imports.	Exports.	Imports.	Exports.
Spain	\$10,200,429	\$3,882,634	\$7,756,905	\$3,298,871	\$9,057,428	\$3,615,692
United States.....	6,552,585	12,076,408	6,799,732	12,131,085	7,867,650	11,641,813
England.....	5,638,824	5,486,677	6,195,921	8,332,185	6,610,909	11,119,526
France.....	2,203,354	1,513,368	2,177,222	3,293,389	2,558,196	1,921,567
Germany.....	1,102,002	1,690,165	1,115,940	1,474,018	1,420,639	1,894,074
Belgium.....	493,908	321,260	998,511	466,306	635,866	811,880
Spanish America.....	2,144,618	801,160	1,677,476	514,831	2,145,370	671,380
Portugal and Brazil.....	.....	.....	.....	.....	16,245	14,186
Holland.....	243,386	297,152	88,876	246,661	194,390	251,482
Denmark.....	657,554	864,366	455,422	403,085	538,894	309,949
Russia.....	.....	483,918	.....	253,688	.....	.....
Sweden and Norway.....	27,783	15,489	47,756	16,309	14,076	23,694
Austria.....	.....	241,458	.....	138,036	.....	168,453
Italy.....	32,309	380,586	69,022	651,275	24,082	313,779
Deposit.....	483,486	.....	377,011	.....	310,865	.....
Total.....	29,780,242	27,453,936	27,789,800	31,210,405	31,394,578	32,683,731
Add for Prussia.....	.....	.....	.....	.....	.....	5,258

No. 2.

Statement of the aggregate of revenue and expenditure of the Island of Cuba.

REVENUE.

Section 1.—Contributions and imports.....	\$3,026,833 69
Section 2.—Customs	9,807,878 87
Section 3.—Taxes and monopolies.....	1,069,795 44
Section 4.—Lotteries.....	6,719,200 00
Section 5.—State property.....	119,285 94
Section 6.—Contingencies.....	595,928 94
	<hr/>
	21,338,928 88
Deduct for sums paid as portions of the forfeitures under seizures.....	12,972 88
	<hr/>
Actual total.....	21,325,956 00
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EXPENDITURE.

Section 1.—Grace and justice.....	\$712,755 00
Section 2.—War	5,866,538 36
Section 3.—Exchequer	7,645,145 43
Section 4. { Ordinary expenses	2,386,634 16
{ Extraordinary expenses.....	1,190,700 37
Section 5.—Executive department	2,115,833 12
Section 6.—Attentions (remittances) of the peninsula	1,404,059 00
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Total	21,321,665 44
	<hr/>

* From this sum should be deducted \$5,022,000, which figures among the expenditures of the exchequer under the government guaranty of prizes in the lotteries, and which is included in the sum of \$7,645,145 43 set down as expended by that department. This leaves a net revenue from that source of \$1,697,200, and a total net revenue of \$16,105 96.

ACQUISITION OF CUBA.

No. 3.

Comparative statement of the number of sea-going vessels entering the port of Havana for the years named.

	American.		Spanish.		English.		French.		Other nations.		Aggregate of each month.	
	Number.	Tonnage.	Number.	Tonnage.	Number.	Tonnage.	Number.	Tonnage.	Number.	Tonnage.	Number.	Tonnage.
1858.												
January.....	101	44,162	54	10,803	13	6,326	1	1,050	14	3,845	123	66,116
February.....	79	37,367	39	5,986	22	9,976	3	1,635	13	3,710	146	58,664
March.....	781	44,462	22	7,092	11	4,694	5	2,948	9	2,756	156	63,013
April.....	102	42,492	66	13,523	21	8,347	3	1,523	21	5,633	215	72,633
May.....	102	42,359	61	18,981	15	5,940	3	1,176	10	3,085	211	71,321
June.....	69	32,836	65	14,885	11	5,184	2	1,029	12	4,372	160	54,996
July.....	64	30,469	67	15,066	10	4,181	1	523	12	3,817	144	44,751
August.....	46	20,705	53	10,256	11	5,234	2	822	10	3,925	103	40,575
September.....	68	31,677	12	15,686	10	5,543	2	1,664	12	3,711	162	55,167
October.....	76	31,547	42	17,276	15	7,620	3	1,748	12	3,383	161	62,067
November.....	69	30,313	46	17,729	7	4,020	2	843	15	3,360	160	52,940
December.....	95	28,825	56	19,122	15	6,000	1	614	13	3,752	209	53,493
Total for 1858.....	958	392,572	653	151,027	161	74,127	25	12,603	79	46,432	1,949	679,815
1857.												
January.....	909	406,873	684	153,651	159	64,110	67	28,760	141	42,979	1,853	696,306
February.....	893	384,758	659	150,524	131	59,013	62	20,153	133	38,963	1,815	662,426
March.....	880	379,327	597	130,661	116	48,993	129	33,523	113	50,463	1,717	613,155
April.....	903	336,998	571	111,693	159	56,556	69	18,790	137	30,697	1,782	557,186
May.....	813	304,138	553	111,029	126	55,324	93	20,877	124	33,030	1,717	537,403
June.....	750	308,190	578	114,328	143	55,437	59	12,538	154	40,738	1,647	590,186
July.....	856	344,046	550	114,316	191	65,208	47	11,134	156	40,789	1,800	568,483
August.....	634	296,269	541	107,320	164	65,136	51	12,466	152	40,337	1,542	482,468
Total for 1857.....	909	406,873	684	153,651	159	64,110	67	28,760	141	42,979	1,853	696,306
1856.												
January.....	893	384,758	659	150,524	131	59,013	62	20,153	133	38,963	1,815	662,426
February.....	880	379,327	597	130,661	116	48,993	129	33,523	113	50,463	1,717	613,155
March.....	903	336,998	571	111,693	159	56,556	69	18,790	137	30,697	1,782	557,186
April.....	813	304,138	553	111,029	126	55,324	93	20,877	124	33,030	1,717	537,403
May.....	750	308,190	578	114,328	143	55,437	59	12,538	154	40,738	1,647	590,186
June.....	856	344,046	550	114,316	191	65,208	47	11,134	156	40,789	1,800	568,483
July.....	634	296,269	541	107,320	164	65,136	51	12,466	152	40,337	1,542	482,468
Total for 1856.....	909	406,873	684	153,651	159	64,110	67	28,760	141	42,979	1,853	696,306

No. 4.

Table of the total production of sugar, consumption, &c.

	Tons.
Cane sugar	2,057,653
Palm sugar	100,000
Beet-root sugar	164,822
Maple sugar	20,247
Total	2,342,722

But the quantity of sugar from which the United States, England, Europe, and the Mediterranean is to be supplied reaches only 1,273,000 tons. Thus, for the 300,000,000 souls who are dependent on it, it gives but about eight pounds per head, while the consumption in England is triple that quantity, and in the United States twenty pounds per head. The use of sugar in the world is rapidly increasing. In France it has doubled in thirty years. It has increased more than fifty per cent. in England in fifteen years. In the Zollverein it has quadrupled. The following table will show the imports and production of sugar in Great Britain, France, and the United States, during many years :

Consumption of sugar in Great Britain, France, and United States.

Years.	Sugar duty paid in France.				Great Britain.	United States.			Average amount.
	Colonial.	Foreign.	Beet root.	Total.		Foreign.	Louisiana.	Total.	
	Tons.	Tons.	Tons.	Tons.	Tons.	Tons.	Tons.	Tons.	Per cent.
1841	74,515	12,042	97,162	114,719	203,200	65,601	38,000	103,606	49.52
1842	77,443	8,210	35,070	110,723	193,823	69,474	39,300	108,674	45.42
1843	79,455	9,695	29,155	118,215	204,016	26,854	64,360	93,214	42.30
1844	87,382	10,269	22,075	129,626	206,000	83,601	44,400	128,206	41.82
1845	90,958	11,542	35,132	137,632	242,631	88,336	45,000	133,336	40.40
1846	78,632	15,185	46,845	140,662	261,932	44,974	83,028	128,002	41.85
1847	87,896	9,626	52,369	149,821	290,275	98,410	71,040	169,450	34.25
1848	48,371	9,540	48,103	106,014	309,424	164,214	107,000	271,214	29.40
1849	63,335	18,979	43,793	126,107	299,041	103,121	99,180	202,301	31.00
1850	50,996	23,862	67,297	142,155	310,391	84,813	110,600	194,413	32.22
1851 .....	.....	.....	74,999	.....	329,715	190,193	102,000	292,193	32.32
1852	32,030	14,892	67,445	114,357	360,720	226,772	118,273	347,045	28.00
1853	32,841	15,044	87,120	135,005	380,488	232,213	160,967	393,180	30.72
1854	40,113	18,943	85,825	144,981	475,095	297,982	224,662	452,644	.....
1855	45,373	49,822	52,902	148,097	384,234	236,942	173,317	410,259	.....
1856	46,767	16,456	95,103	158,326	397,449	272,631	115,713	388,344	.....
1857	42,466	25,689	*132,000	200,155	367,476	388,501	36,933	425,434	.....

* To close of February.

The production of beet-root sugar in France was for four years as follows :

	No. working.	Kilos.
1854	303	77,848,208.
1855	208	50,180,864
1856	275	91,003,098
1857	341	132,000,000

The figures for 1857 are only to March 1, and exceed by 54,000,000 kilogrammes the product of last year. The production in the Zollverein in 1855 was as follows :

	Cwt.
Prussia	14,099,263
Anhalt	2,301,364
Bavaria	247,126
Saxony	131,968
Wurtemberg	603,256
Baden	988,825
Hesse	59,137
Huringen	122,965
Brunswick	634,496

Giving a total of 19,188,402. The increase in the consumption is immense. In 1841 the total for the three countries above named was 420,000 tons. This has increased to 800,000 tons, or a quantity nearly doubled, and the supply has come from Louisiana and from beet roots; the former failed considerably in the last two years, and, as a consequence, nearly convulsed the world. The value of sugar in the open market, then, seems to depend upon the precarious crop of Louisiana, since, when that fails, the prices rise all over the world.—*U. S. Economist.*

No. 5.

Table of number of Chinese shipped from China from 1847 to March 23, 1858.

The following table, derived from a reliable source, exhibits the total number of vessels that have arrived at this port since 1847 with Asiatics; their flags, tonnage, number of Asiatics shipped and landed, number and per centage of deaths, &c., which, I think, will not be deemed uninteresting:

Flag of vessels.	Numbers.	Tonnage.	Asiatics, number shipped.	Landed.	Deaths.	Per centage of deaths.
American	13	13,545	6,744	5,999	815	19
British	29	21,275	10,791	9,305	1,586	14
Dutch	8	5,003	2,773	2,463	310	11
French	7	6,037	3,655	3,154	501	13
Spanish	5	2,038	1,779	1,489	290	11
Portuguese	3	1,946	1,049	1,021	98	9
Peruvian	3	2,484	1,314	812	502	36
Bremen	1	560	949	236	13	5
Norwegian	1	470	221	179	42	19
Chilean	1	250	202	155	47	23
Total	71	53,008	28,777	24,643	4,124	14

From the foregoing it will be seen that the loss of life on the total number shipped actually amounts to $14\frac{3}{4}$ per cent.; and whilst the number of deaths of those brought hither in Portuguese ships amounts to only $2\frac{3}{4}$ per cent., the number brought in American ships amounts to 12 per cent., in British ships to $14\frac{3}{4}$ per cent., and in French ships to $13\frac{3}{4}$ per cent., whilst in Peruvian ships the number of deaths amounts to $38\frac{1}{4}$ per cent.

No. 6. .

Population of the West Indies, as stated in Colton's Atlas of the World, volume 1.

Hayti—Haytien empire	572,000
Dominican republic	136,000
Cuba (slaves 330,425)	1,009,060
Porto Rico	447,914
French islands—Guadalupe and dependencies	154,975
Martinique	121,478
French Guiana	22,110
St. Bartholomew	9,000
Danish islands—St. Thomas	13,666
Santa Cruz	23,729
St. John	2,228
	<hr/>
	39,623
Dutch islands—Curaçoa, &c.	28,497
Dutch Guiana	61,080
British islands—Bahamas	27,519
Turk's island	4,428
Jamaica ^o	377,433
Caymans	1,760
Trinidad ^o	68,645
Tobago	13,208
Granada	32,671
St. Vincent	30,128
Barbadoes	135,939
St. Lucia	24,516
Dominica	22,061
Montserrat	7,653
Antigua	37,757
St. Christopher's	23,177
Nevis	9,601
Barbuda	1,707
Anguilla	3,052
Virgin islands	6,689
British Guiana	127,695
	<hr/>
	963,639
Total	<hr/>
	3,575,376

^o Acquired from Spain.

IN THE SENATE OF THE UNITED STATES.

JANUARY 25, 1859.—Ordered to be printed.

Mr. FOSTER made the following

REPORT.

[To accompany Bill S. 528.]

The Committee on Pensions, to whom was referred the petition of Rebecca A. Correll, widow of Isaac Correll, deceased, late private in company "D," 11th regiment of United States infantry, for a pension, having had the same under advisement, submit the following report:

It appears from the evidence before the committee that the petitioner was married to the late Isaac Correll on the 7th day of July, 1842; that her husband enlisted at McVeytown, Mifflin county, Pennsylvania, on the 25th day of February, 1847, in the eleventh regiment of United States infantry, and went with said regiment to Mexico; that while in the service he was taken sick in consequence of the exposure and hardships of the campaign, and honorably discharged for disability on the 14th of November, 1847; that returning home, he never recovered his health, but lingered till the month of June, 1852, when he died of the disease contracted in Mexico.

The petitioner has heretofore applied to the Commissioner of Pensions for relief, and been refused a pension on the ground that her case does not come within the strict meaning of the laws. The objections to her claim are set forth in a letter from the Commissioner, dated January 11, 1859, which says:

"A pension has not been allowed under the general laws, because the evidence adduced has not been deemed sufficient to show that the disease of which the husband died was contracted while in the military service and in the line of duty."

The fact that the petitioner's husband contracted the disease of which he died in the "line of duty" appears sufficiently proven by the testimony of private Hall, Corporal Coulter, and Brevet Captain McCoy; and Captain Irwin's, commanding company "D," is direct and positive, stating his firm belief that the disability for which the deceased was discharged, and from which he never recovered, resulted from the severe duty and great exposure of the campaign.

Your committee are of opinion that the case is within the equity and spirit of the law, and therefore report a bill for the relief of the petitioner.

IN THE SENATE OF THE UNITED STATES.

JANUARY 25, 1859.—Ordered to be printed.

Mr. SHIELDS made the following

REPORT.

[To accompany Bill S. 530.]

The Committee on Revolutionary Claims, to whom was referred the memorial of H. M. Salomon, for indemnification for advances of money, made by his father during the revolutionary war, have had the same under consideration, and respectfully report:

Your committee have carefully reconsidered the facts and vouchers submitted by the memorialist in support of his prayer for relief, and have compared the same with the conclusions arrived at by the various preceding committees of both Houses of Congress, whose duty it has been to perform a similar labor—as summed up in Senate report No. 177, 1st session of the 31st Congress—and after due consideration feel warranted in asserting, that the said reports are well sustained by the facts, and fully entitle the petitioner to the relief asked for; and to that end do now adopt the labors of their predecessors as the basis of this report.

From the many documents and papers before your committee it is shown that during the first session of the 30th Congress, the Committee on Revolutionary Claims in the House of Representatives, consisting of Messrs. King, of Massachusetts; Smart, of Maine; Outlaw, of North Carolina; Morris, of Ohio; Butler, of Pennsylvania; Iverson, of Georgia; Newell, of New Jersey; Tallmadge, of New York; Bowden, of Alabama; to whom the House had referred a memorial similar to that which has been laid before this committee on behalf of Haym M. Salomon, a native of Philadelphia, son and legal representative of the late Haym Salomon, merchant and banker there, carefully inquired into the allegations of the petitioner, and unanimously agreed to a report, from which the following is an extract:

“That they have fully examined the mass of documentary evidence submitted by the said memorialist, and having satisfied themselves of its authenticity, do regard it as sustaining the claim advanced by the memorialist, which they therefore recommend to the favorable consideration of the House of Representatives.”—(Report No. 504.)

During the first session of the 29th Congress, the Committee of

Claims in the Senate, consisting of Messrs. Pennybacker, of Virginia; Morehead, of Kentucky; Clayton, of Delaware; Johnson, of Maryland; Dickinson, of New York, unanimously agreed to a report similar to that adopted by the House Committee, but too late for presentation. During the second session another report was drawn up by Senator Bradbury, placed on file, and is mainly as follows:

"That it appears from documentary evidence submitted by the memorialist, that Haym Salomon, his father, contributed largely of his pecuniary means towards carrying on the war of the revolution, aiding the public treasury by frequent loans of moneys, and advancing liberally of his means to sustain many of the public men engaged in the struggle for independence, at a time when the sinews of war were essential to success. It further appears to be satisfactorily established that the confidence of Mr. Salomon was so great in the good faith of this government, that he parted with his money, relying on that good faith for its return.

"He died suddenly, after the conclusion of peace, and the inventory of the estate contains a list of treasury and other evidences of indebtedness of the government of a very large amount, viz:

Loan office certificates	\$110,233 63
Treasury certificates	18,244 88
Continental liquidated dollars	199,214 45
Commissioners' certificates	17,870 37
Virginia State certificates	8,166 00
	<hr/>
	353,729 43
	<hr/>

"The petitioner contends that during the extreme infancy of the heirs of Mr. Salomon, his children were most unjustly deprived of this revolutionary paper. But it cannot now be ascertained if the administrator may not have received a small percentage which was paid for that class of debts of the government some years after his death. Be that as it may, the committee are of the opinion that Mr. Salomon rendered that important and peculiar service in aid of the revolutionary war; that it presents a case where Congress can mark its sense of such services without injustice to the public treasury, by a suitable indemnity to the heirs of one who was a benefactor, and whose family of infant children were left in penury by his devotion to the revolutionary war, and his confidence in the good faith of the country."

The claim set forth in this case is, that Haym Salomon, a native of Poland, during the war of the revolution, largely contributed of his pecuniary means towards carrying it on, assisting the agency of finance by frequent loans of money, and his obligations, from time to time, in sums varying from \$20,000 to \$40,000, and contributing to the support and sustenance of many eminent men of that time, engaged in the struggle for independence; that this was done without a consideration.

That of the moneys advanced by Haym Salomon no evidence exists

of any payments by the government of the United States in discharge of their obligations to him; and that, in point of fact, *no such payments were ever made to his widow or children.*

The memorialist alleges that the sum of \$300,000 was thus advanced by his father, in addition to various sums gratuitously bestowed upon sundry eminent individuals connected with and holding important offices in the administration of public affairs.

From the evidence in the possession of the committee, the patriotic devotion of Haym Salomon to the cause of American independence cannot, in their judgment, be questioned. The proof of his eminent character and standing as a citizen and merchant is very clear and abundant.

He was the countryman and intimate associate of Pulaski and Kosciuszko; and from facts submitted to the committee, it has been fully demonstrated that in the depth and sincerity of his devotion to the cause of human liberty he was not surpassed by either of those illustrious men.

For some time antecedent to the revolutionary war Mr. Salomon had resided in this country, carrying on business as a merchant, and had established that high character for probity and self-sacrificing patriotism which appears ever to have distinguished him. As early as 1775 he became obnoxious to the British government, and was imprisoned in New York, sharing the privations and horrors of the sufferers confined in a loathsome jail called the Prevot. This was about the same period that the patriot, William Stockton, was confined in the Jersey prison, and contracted a disease thereby, by which he, like Mr. Salomon, was brought to an untimely grave. Having escaped from prison, Mr. Salomon is next heard of as the negotiator of *all the war subsidies obtained from France and Holland*, which he endorsed and sold in bills to the merchants in America, at a credit of two or three months, *on his own personal security*, without the loss of a cent to the country, and receiving only a quarter per centum; while, as appears from an account now in the archives of the Department of State, relating to the twenty million livres subsidy, \$60,000 were deducted in France as the cost of the negotiation. It is also seen by the archives, that Robert Morris charges 100,000 livres to the United States, as having been given to one John Chalomer, 30th September, 1782, in the form of a *douceur*, to induce him to use his efforts to keep up the rates of exchange on Paris; also 10,000 livres, as paid to one Jones—whereas *Mr. Salomon had kept up the prices by the sales of many millions on the French Government*, before and after the giving of those *douceurs* by Morris, for which Mr. Salomon *did not charge or receive one cent.*

From a duly authenticated extract from the inventory of Mr. Salomon's personal estate, at the period of his death, it appears that he was the possessor, *bona fide*, at par value, of revolutionary paper to the amount of \$353,744, in which he had invested his entire real estate, as well as his mercantile earnings, in the patriotic manner already described, and of which abundant evidence is presented in the documents exhibited to the committee. The utterly destitute condition of the United States treasury at this period is well known. Mr. Salomon died very unex-

pectedly, in the prime of life, about the close of the war of independence intestate. These government obligations were taken possession of by an individual, then a member of Congress from Pennsylvania, and a person acting as treasurer of that State, and no evidence remains to enable the memorialist to trace the disposition of them, or the payment by the government of these public securities. *Not one dollar of the proceeds, however, was at any time received by the widow or children*, the original and rightful possessors, of which there is unquestionable evidence.

When his father died intestate, the memorialist was barely in existence; his brother and sisters were young infants, the eldest scarcely six years of age; their mother was very young, and unacquainted with business; no relative of their father in the country to take charge of his interests, and the times were quite unsettled.

Mr. Haym Salomon's principal clerk and manager, Mr. McCrea, a very able man, who had been many years in his service, shot himself shortly thereafter in a fit of derangement; strangers administered to Mr. Salomon's estate; and, by reference to the register office of probate of wills, it appears that only two of the administrators filed an account, December 23, 1789, charging Rachel Salomon, mother of the memorialist, only £535 7s. 11d., (for the household furniture) but that *nothing else was ever paid to her or to the children*.

The revolutionary paper for which the United States were indebted to *Haym Salomon* at his death, as per inventory, consisted of five species of revolutionary paper, before noticed, and amounted to \$353,729 43.

Mr. Michael Nourse, the Treasury Register, states, February 23, 1849, that the probable amount which the United States would have paid for the above money and certificates, at the rate at which they funded paper under the funding act of August 4, 1790, would have been (a small percentage) only \$48,509 85, exclusive of interest, and the above \$8,166 48 of Virginia State certificates, the value of which in 1790 he did not know. Many of the memorialist's most valuable papers and records, submitted to members and to committees of Congress, have been lost; among these were documents affording strong collateral proofs of the justice of his claim. He sent a large packet of revolutionary documents to Mr. Secretary Forward, which it appears that Mr. McClintock Young was unable to find among the papers of the department.

Another packet of his papers was left with President Tyler; and when the memorialist requested that it might be returned to him the Assistant Postmaster General, Dr. N. M. Miller, replied that a large box belonging to the President had been lost; and he added: "I am apprehensive your papers were in that box. I regret much my inability to procure your papers."

Of the effect which a perusal of the evidence then offered by the memorialist produced on the mind of William C. Rives, now the envoy from this government to France, his letter introducing the memorialist to President Tyler, in January, 1843, affords proof. He said: "I beg to present to you Mr. H. M. Salomon, who has such im-

posing testimonials of his own meritorious character, as well as of the important services rendered by his father to the holy cause of our revolutionary struggle, that it is but an act of justice to invite your favorable consideration."

Mr. Joseph Nourse, who was Register of the Treasury from 1777 to 1828, writing the memorialist, dated Washington, June, 1827, in reply to a request relative to his father's property, says:

"I have cast back to those periods when your honored father was agent to office of finance; but the inroads of the British army in 1814 deprived us of every record in relation to the vouchers of the period to which I refer."

The importance of the secret support of the minister of Charles III of Spain, is well known. It appears that in effecting that object Mr. Salomon performed essential services. He maintained from his own private purse, Don Francisco Rendon, the secret ambassador of that monarch, for nearly two years, or up to the death of Mr. S., during which Rendon's supplies were cut off.

In a letter of Don Francisco Rendon to the Governor General of Cuba, Don Jose Marie de Navarra, 1783, he says: "Mr. Salomon has advanced the money for the service of his most Catholic Majesty, and I am indebted to his friendship, in this particular, for the support of my character as his most Catholic Majesty's agent here, with any degree of credit or reputation; and without it, I would not have been able to render that protection and assistance to his Majesty's subjects which his Majesty enjoins and my duty requires." Moneys thus advanced to the amount of about 10,000 Spanish dollars, remained unpaid, when Mr. Salomon died shortly after.

On the accession of the Count de la Luzerne to the embassy from France, Mr. Salomon was made the banker of that government. A letter from Count Vergennes, Minister of State, to De la Luzerne, ambassador to this country, states the cost of the expeditions, during the first and second years of the alliance, at 150,000,000 livres; all of that sum, which was disbursed in this country, passing through the hands of Mr. Salomon, the mercantile commissions on which increased to a large amount the capital invested by him and devoted to the republic. He was also appointed by Monsieur Roquebrune, the treasurer of the forces of France in America, to the office of their paymaster general, which he executed free of charge. The day-book and ledger of the Bank of North America, as appears from a statement authenticated by Mr. Hockley, the cashier, May 1, 1846, exhibit the receipt by Robert Morris, superintendent of finance, of nearly \$200,000 in specie, commencing January 1, 1782, and continuing till 1784, when Mr. Salomon was seized with his fatal illness. The same records show that the only cash deposits made by Morris to his own credits, were received from Mr. Salomon, whose account is charged with the exact sums deposited by Morris on the days said deposits were made by and credited to him at the bank.

No evidence can be found to show that Haym Salomon, his widow, or his children, ever received payment of the above \$200,000, or of upwards of another \$100,000 advanced by him during the contest, to

Roquebrune, De la Forest, Holker, Barbe Marbois, De la Luzerne, and others, accredited ministers or otherwise, acting as agents for foreign powers in open or secret alliance with America and France; and the probability, owing to Mr. Haym Salomon's sudden death, without any relative or connexion capable of taking charge of his estate, and the unsettled character of the times, is, that the greater part never was paid; but the memorialist, at this late day, has refrained from asking the United States for the above remuneration, and confined himself to a demand of indemnity for the revolutionary paper, or evidences of debt, of which his father died seized, \$353,000, and which it is clearly proved were never redeemed, or commuted for the benefit of the true owners—(if redeemed, a small percentage only was paid, as stated by the treasurer) in his latest testimony.

It appears that Haym Salomon, during the most critical periods of the revolution, made very liberal advances from his private funds to many of the most distinguished citizens then engaged in public affairs—moneys which were indispensable to their comfort, and which it is proved could not otherwise be obtained.

Gentlemen who, for their revolutionary services, have since that time filled the presidential chair, by double elections, were for a long time dependent on him for the means of subsistence.—(See Mr. Madison's letters.)

His vast pecuniary resources, exhibited to this committee, through extracts from the ledger of the first bank, were entirely devoted to the use of the revolutionary government, were in the end thus jeopardized by his sudden demise, and finally lost to his widow and family.

Among the men of the revolution whom he freely aided while they were discharging important public trusts, your committee find the names of Thomas Jefferson, (Secretary of State to Washington, and twice President;) James Madison, (twice President;) Arthur Lee, (Ambassador to France;) Baron Steuben, (Inspector General of the whole Continental Army;) General Mifflin, (Governor of Pennsylvania;) General St. Clair, (one of the best commanders;) Colonel Bland, (M. C., Agent of Virginia;) J. F. Mercer, (Delegate of Virginia;) Joseph Jones, (Delegate of Virginia, and uncle of James Monroe;) James Wilson, (Signer of Declaration of Independence, one of the principal framers of the present constitution, and first judge appointed by Washington;) Robert Morris, (Superintendent of Finance, &c.)

The late Henry Wheaton, writing to the memorialist relative to his claim says: "It would be no more than requiring the debt of gratitude the country owes your honored father, who sustained, by his liberal munificence the efforts of the patriots of the revolution, who were compelled to sacrifice their private pursuits to the public. Among these may be mentioned Judge Wilson, so distinguished for his labors in the convention that formed the Federal Constitution, who must have retired from public service if he had not been sustained by the timely aid of your father, administered with equal generosity and delicacy.

"There will also be found a letter from Mr. Madison to Edmund Randolph, in which that illustrious patriot bears testimony to the

liberal and munificent spirit of your father, as evinced towards him and others in 1782, a period in which the pecuniary condition of the country was extremely distressed."

Mr. Madison, writing to the memorialist from Montpelier, February 6, 1830, relative to the Virginia delegation, says:

"*Dear Sir*: The transactions shown by the papers you enclosed were for the support of the delegates to Congress, and the agency of your father therein was solicited on account of the respectability and confidence he enjoyed among those best acquainted with him."

Mr. Madison, addressing his colleagues, Messrs. Randolph and Jones, while he was in the Revolutionary Congress, 1780 to 1783, says:

1. "The expediency of drawing bills on funds in Virginia, even the most unquestionable, has been tried by us in vain.

2. "I am fast relapsing into pecuniary distress. The case of my brethren is equally alarming."

3. "I have been a pensioner for some time on the favor of Mr. Haym Salomon."

4. "I am almost ashamed to reiterate my wants so incessantly to you. The kindness of our friend in Front street, near the coffee-house, (Haym Salomon,) is a fund that will preserve me from extremities; but I never resort to it without great mortification, as he obstinately rejects all recompense. To necessitous delegates he always spares them supplies."

In 1781 Mr. Morris, superintendent of finance, wrote the President of Congress, that "the treasury was so much in arrears to the servants in the public offices, that many of them could not, without payment, perform their duties, but must have gone to jail for debts they have contracted to enable them to live."

It was at a crisis like this that Mr. Salomon aided the government and members of Congress, without any security, trusting in the honor of the American people when independence should have been secured.

Dr. Jared Sparks, president of Harvard University, and celebrated for his researches into the historical records of more than a thousand volumes of the archives of the United States and France, when writing to the memorialist from Cambridge, May 7, 1845, says:

"Among the numerous papers that have passed under my eye, I have seen evidences of his [meaning Mr. Haym Salomon's] transactions, which convince me that he rendered important services to the United States in their pecuniary affairs."

The committee, from the evidence before them, are induced to consider Haym Salomon as one of the truest and most efficient friends of the country in a very critical period of its history, and when its pecuniary resources were few and its difficulties many and pressing. He seems to have trusted implicitly to the national honor; and the committee are of opinion that, as in the case of Lafayette and others, the nation ought to be liberal in their indemnity to a son of an early benefactor in the day of its prosperity.

Your committee, in further verification of the conclusions arrived at by their predecessors and now adopted in this report, have made a careful examination of the state of the respective accounts of Haym

Salomon and Robert Morris and others, for and during the period of our revolutionary struggle, when it is shown that Haym Salomon advanced, for the public good, his money in the liberal manner stated, as the same is exhibited in the sworn statement of the present cashier of the Bank of North America, through which institution most of these transactions were had ; and after such examination your committee are constrained to say that a most convincing corroboration is maintained of the whole merits of the claim.

This statement or exhibit of the financial credit and dealings of Haym Salomon with that bank was first adduced by the request of the committee of Congress in 1846, when a report was agreed upon granting the desired relief, but too late for presentation at that session of Congress, the manuscript of which is now before your committee. In 1848 the same committee called for the re-exhibition of the same matter of fact, which was carefully complied with and sworn to by the same officer of the bank, which is in the words and figures following, viz :

BANK OF NORTH AMERICA, September 21, 1848.

The account of Haym Salomon with the Bank of North America appears to have been as early as the beginning of its operations, from January, 1782, and only to January, 1784, occupies fifteen entire pages of the ledger. The first forty other entire accounts, beginning also from first of the ledger, occupy, in all, but fifteen pages. The same appears the proportion of the amount of his account when compared with the others.

The following are the balances, as appears in the bank book of Haym Salomon, for those periods, as they are in the same handwriting as the ledger of the bank :

February 1, 1782.....	\$23,253 00
April 23, 1782.....	32,233 00
June 26, 1782.....	46,569 00
August 14, 1782.....	18,238 64
May 2, 1783.....	14,144 35
July 1, 1783.....	11,005 62
August 25, 1783.....	14,854 27
March 31, 1784.....	26,743 74

Respecting the examination of the deposition of the amount charged in the undermentioned checks or drafts to the account of Haym Salomon, paid to Robert Morris and to superintendent of finance :

August 1, 1782, to Robert Morris, \$20,000 ; August 9, 1782, to ditto, \$10,000 ; August 27, 1783, \$20,000 ; October 8, 1783, \$6,000 ; October 13, 1783, \$6,000 ; October 17, 1783, \$6,000 ; October 27, 1783, \$3,000 ; October 30, 1783, \$5,000.

The above, with thirty-three other orders, amounting to upwards of one hundred thousand dollars, exclusive of the above, of various dates and amounts, appear all charged as having been paid to Robert Morris, in the daybook and ledger of the bank.

The account of Robert Morris himself begins July 17, 1782, and ends May 6, 1783, being about the same period of time as Haym Salo-

mon's account, as examined. The credit side consists principally of two discounts—\$22,625 20. The only cash deposited by him was \$9,822 06, which appears to have been received from Haym Salomon, as Haym Salomon's account is that day charged with the exact amount stated as paid to Robert Morris.

I have examined the charges in the account of the ledger of the bank against Haym Salomon, of various dates, as received by the following persons: Jefferson, Wilson, Ross, Morris, Harrison, Pendleton, Madison, Randolph, Jones, who are said, in history, to have been members of the Congress of the Declaration, or of the subsequent session of the revolutionary legislature, and found them to agree as to dates and amounts, as well as the sums and dates of those charged to Haym Salomon, as paid to General St. Clair, General Mifflin, and Baron Steuben, with the charges of the same in the bank books.

Respecting the disposition of the funds charged to Haym Salomon, at the bank, as made payable to the persons undernamed, who, according to the journals of the revolutionary Congress, examined, as per certificate of librarian of the House of Representatives of the United States, August eighteen, eighteen hundred and forty-eight, and according to an exemplification, marked F, from files in the Department of State, signed James Buchanan, Secretary of State, with the seal of that department, papers of old Congress, number 137, page 193, were agents, consuls, chargé d'affaires, and ministers of Louis XVI of France and Charles III of Spain, our allies of the revolution, I found by an examination of the payments to Roquebrun, said to have been the treasurer of Rochambaud's army, August 2, 1782, August 15, and August 18, 1782, amounting to \$61,404 38, which several amounts are credited on the same days in the account, as received by Roquebrun from Haym Salomon.

Sieur De La Forrest, (spelled in the ledger Forer,) consul general of France in the revolution, is credited with twenty drafts, amounting to \$31,434 39, charged in the bank book and ledger to Haym Salomon.

John Holker, consul of King Louis; the amount as payable to him is also charged to Haym Salomon's account.

Sieur Barbe Marbois, chargé d'affaires of the King; the checks charged, as far as examined, as for amounts received at the bank from Haym Salomon, by him, were credited on the bank ledger as received by Marbois from Haym Salomon.

Chevalier De La Luzerne, the French ambassador of King Louis XVI, so friendly to this country in the revolution. All the checks charged, or so many as were examined, stated as payable to La Luzerne, were also charged on the ledger of the bank to Haym Salomon, as paid the chevalier; and the only cash deposits of the latter agree precisely with the amount named on the check payable to him.

Don Francisco Rendon, the secret minister of Charles III, of Spain, in the revolution; the amount and date of the check charged, as payable to him, agree precisely with the ledger of the bank, as charged to Haym Salomon.

J. HOCKLEY,
Cashier of the Bank of North America

Witness sworn September 21, 1848, before Chauncy Bulkley, ex-officio justice of the peace; certified according to act of Congress before the prothonotary of the Supreme Court, on September 24, 1848.

The foregoing significant facts with others were adduced before the committee of Congress in 1848, and upon which House Report, No. 504, of the 1st session of the 29th Congress, was predicated, but as usual too late to secure the action of Congress, as had been the case in 1846.

When the 30th Congress convened, the petitioner again urged his claim for proper adjustment. At that time it was thought possible some adjustment of this claim might have taken place at the Treasury Department, with the widow or children of Haym Salomon, or with the administrators, or some one else on their account. To be fully satisfied on this point, the Committee on Revolutionary Claims, addressed special inquiries to the First Auditor of the Treasury, on the subject in the following letter :

To THOS. L. SMITH, Esq., First Auditor of the Treasury Department of United States:

SIR: Please be good enough to answer simply yea or nay, to the following questions, arising out of the case of Mr. H. M. Salomon, now before the Committee on Revolutionary Claims, of which I am chairman.

C. SAWTELLE, *Chairman.*

First question.—Can you find that any of the annexed described paper was funded (after the present government was established) by Rachel Salomon, relict of Haym Salomon, or by either of the children of Haym Salomon, viz: Ezekiel Salomon, Sarah Salomon, Deborah Salomon, or Haym M. Salomon?

Second question.—Can you find whether any of said revolutionary paper was ever funded or paid to Thomas Fitzsimmon, M. Clarkson, J. Carson, or E. Levy, administrators of Haym Salomon?

Third question.—Can you find that said Rachel Salomon, relict, or any of the children of Haym Salomon, ever funded any kind of revolutionary paper at all, or any number or amount, after the new government was established in 1789?

Fourth question.—Can you find that the above revolutionary paper, left by Haym Salomon, was ever funded or paid to any person or persons at all after the adoption of the present Constitution?

To this letter the First Auditor, after making a thorough examination of the archives of his department, responded as follows :

TREASURY DEPARTMENT,
First Auditor's Office, March 25, 1850.

SIR: I am in receipt of your letter without date, proposing the four following questions, requesting me to answer simply yea or nay.

(The questions are here inserted as in the original.)

In reply, I have the honor to state that, after a careful search through more than ten thousand pages of records of funded certificates of revolutionary debt, being the entire series of said records, page by

page, (for they do not appear to have made indexes previous to the present century,) I have to give a negative answer to each and all of your inquiries, which I accordingly hereby do.

Your letter and the accompanying verified schedule of certificates are herewith returned.

Very respectfully, your obedient servant,

T. L. SMITH, *Auditor*.

Hon. C. SAWTELLE, *House Representatives*,

Your committee, in order to leave no doubt existing as to any possible liquidation of this claim, in behalf of Haym Salomon or his heirs, at any period after its creation, have, in addition to the proof from the court of probate in Philadelphia, and the records of funded revolutionary indebtedness, as verified by the foregoing facts and vouchers, had before them the accounts of Robert Morris, the honorable superintendent of finance in the revolution, as rendered at the Treasury Department, wherein, after summing up all moneys paid by him in his official capacity for the department, he was still something in arrears—after a careful examination, we do not find Haym Salomon charged with a dollar as having been paid to him in any way whatever; nor does there anything appear to lessen the effects of the conclusions that your committee, in common with their predecessors, have arrived at. And as a last resort, a like examination has been made in the sworn statement of the personal accounts of Robert Morris, made while that venerable patriot was confined in prison for debt, about the year 1805, as exhibited in a printed schedule procured by your committee, but nothing whatever is found therein as having been paid or charged to Haym Salomon.

Your committee in view of all these facts, can come to no other conclusion than that the memorialist is eminently and undoubtedly entitled to relief. The only question remaining to be considered, is the manner in which it shall be allowed.

The amount of public securities held by Haym Salomon, at the time of his death was \$353,729 43. The moneys advanced by him to Robert Morris, as superintendent of finance, and to Robert Morris individually, amounts to the sum of \$300,000, besides the sums advanced to Don Francis Rendon, the secret ambassador of Spain, and to James Madison, Joseph Jones, James Wilson, Theophilis Bland, General Mifflin, Thomas Jefferson, Baron Steuben, and others in the revolutionary service, to an indefinite amount, the payment of which there is nothing to show. unless it is supposed these moneys are accounted for to some extent by the amount of the public securities held by Haym Salomon at the time of his death; but this hypothesis is greatly weakened, if not wholly destroyed by the fact that the original evidences of indebtedness still remain in the hands of the children of Haym Salomon, which precludes the idea of a cancelment.

But there is another important item of charge in the public securities held by Haym Salomon, which your committee cannot overlook in estimating the full amount which might be claimed as justly due the heirs of Haym Salomon: in the sworn inventory before the committee, it is shown there was \$199,000 of "continental liqui-

dated dollars." This item is explained to your committee by Michael Nourse, esq., so long the competent and faithful acting register of the treasury, who says in his statement before your committee, "that these 'continental liquidated dollars' would properly mean specie dollars at par value, and should, unless some special exception be shown, bear interest." And further states that after a "careful examination he has been able to see nothing creating such exception." This one item then, considered in this light, would make double the sum now claimed and reported in favor of the claimant.

Your committee, therefore, fully conceding the justice of the claim of Haym M. Salomon, report that his heirs, or legal representatives, are justly entitled to the amount of the indebtedness, or evidences of indebtedness against the United States, found in his possession at the time of his decease, and interest upon a small part of such indebtedness, amounting to thirty-six thousand one hundred and fourteen dollars, (being certificates of the treasury and commissioners' certificates,) and which ought to bear interest from the date of the first application for payment, which appears to be December 29, 1845, until the time of payment, and report the accompanying bill for that purpose.

IN THE SENATE OF THE UNITED STATES.

JANUARY 25, 1859.—Ordered to be printed.

Mr. SHIELDS made the following

REPORT.

[To accompany Bill S. 472.]

The Committee on Revolutionary Claims, to whom was referred the petition of Henry G. Carson, administrator of Curtis Grubb, deceased, surviving partner of the late firm of Curtis & Peter Grubb, report :

That this is a claim for the payment of a "final settlement certificate" No. 265, letter "N," for \$4,180 56, with interest from January 1, 1783, which was issued to Curtis & Peter Grubb on the 5th day of January, 1784, by Benjamin Stelle, commissioner for settling debts due by the United States, in the State of Pennsylvania, this sum having become due to said firm on the 1st day of January, 1783, for cannon, shot, and shells, contracted for by and delivered to the Board of War of the Continental Congress, which certificate, it is alleged, was lost or mislaid during the lifetime of said Curtis Grubb, and which the Register of the Treasury certifies to be still outstanding and unpaid upon the books of the treasury.

It is alleged that Curtis Grubb, who was the surviving partner of the firm of Curtis & Peter Grubb, died in December, 1788, and it is proven that his will was probated on the 19th day of February, 1789, by the register of wills of Dauphin county, Pennsylvania, who also certifies that he has examined the inventories and accounts returned and filed in his office by the executors of the said Curtis Grubb and their administrators, and there is no item of account in relation to this claim against the United States therein named.

It is proven that there is an open account on the books of Cornwall Furnace against the Continental Congress for the amount of this certificate, and for which this certificate was issued.

James L. Reynolds, administrator of Robert Coleman, deceased, makes affidavit that he has in his possession the books and papers of the firm of Curtis & Peter Grubb, belonging to Cornwall Furnace; that he made a careful examination of them, but could not find said certificate among them, or any credit on the said books for the same or any part thereof, and that he believes that said certificate is lost, and cannot be found; and the Register of the United States Treasury

certifies that such a final settlement certificate was issued to Curtis & Peter Grubb, and that it is still outstanding and unpaid.

It appears that large sums were appropriated at various times for the payment of these claims; but they not having been presented to the treasury within the time prescribed by law, the unexpended balances were carried to the surplus fund in 1836 and 1839. The balance of the appropriation of March 3, 1847, remaining in the treasury unexpended was insufficient to pay this claim when presented to the treasury; therefore the Secretary of the Treasury, on the 27th of August, 1852, asked the reappropriation of an amount sufficient to pay this claim. The Senate adopted an amendment to the civil and diplomatic bill making provision for this claim, but it fell with other amendments in the committee of conference upon the disagreeing votes of the two Houses of Congress, although the bill then contained provision for the payment of seventeen other certificates of a similar character, which have since been paid at the treasury, with interest.

This claim was reported against by the Court of Claims (see H. R. Reports, C. C. No. 98, 1st sess. 35th Congress,) solely upon the ground that it was barred by the statute of limitations passed by Congress in the early years of this government.

The action of the government upon the class of revolutionary claims similar to the one now under consideration has been nearly uniform.

In view of the previous and uniform practice of the government in regard to claims for supplies, munitions of war, &c., furnished during the revolutionary war, your committee report herewith a bill for the payment of this claim, with interest upon the same from the time the first application was made to government for its payment, which was, as shown by the documents, to be on the 16th of December, 1844, until the time of payment.

IN THE SENATE OF THE UNITED STATES.

JANUARY 25, 1859.—Ordered to be printed.

Mr. SEWARD submitted the following

REPORT.

The Committee on Foreign Relations, to whom was referred the memorial of Jonas P. Levy, "relative to his claims against Mexico, and praying the interposition of Congress," have had the same under consideration, and now report:

It appears from the papers filed in this case that the petitioner, in behalf of himself and as the natural guardian of the widow and children of his deceased brother, Morton P. Levy, presented a memorial to the board of commissioners appointed under the act approved March 3, 1849, entitled "An act to carry into effect certain stipulations of the treaty between the United States of America and the republic of Mexico, of the second day of February, one thousand eight hundred and forty-eight," setting forth various claims against the republic of Mexico, amounting, exclusive of interest, to the sum of \$90,800.

On the 13th of March, 1851, the board decided that four of the items should be rejected for want of proof to sustain them; the remaining item they were prepared to allow, but had not sufficient evidence before them to enable them to ascertain the amount to which the party was entitled. They finally decided to allow him the sum of \$3,675. After the termination of that board the petitioner presented his memorial to Congress, alleging that absence from the United States, together with the loss or misplacement of his vouchers, either while in the Department of State or before the board of commissioners, had prevented him from establishing the justice of his demand for the whole amount claimed. In compliance with the prayer of the petitioner, an act was passed on March 3, 1854, authorizing "the accounting officers of the treasury to examine and settle the claims of Jonas P. Levy and José Maria Jarrero, for indemnity against the government of Mexico, and which claims were presented to the late board of commissioners on the claims against Mexico, and which were rejected by the said board of commissioners," and directing the payment of whatever amount might be found due, &c.

Under this act the claim was laid before the Fifth Auditor of the

Treasury, who reported the sum of \$54,669 40 as the amount due to said Jonas P. Levy on account of said Mexican claims. This report, dated August 23, 1854, was overruled by the First Comptroller of the Treasury, and the whole claim rejected by his decision on the _____.

From that decision of the Comptroller the petitioner appealed to Congress by another memorial, which, together with all the papers in the case, were, on the _____ day of _____, referred to the Court of Claims. That court, after considering "the petitioner's case, upon the documents and proofs touching the claim which were before the Auditor and Comptroller, and such other proofs as the parties" had adduced, decided that the petitioner was not entitled to relief.

The present memorial, which has been referred to this committee, is an appeal from the decision of the Court of Claims. One of the objects for which that court was established was to afford to claimants against the United States an opportunity for having the decisions of the executive departments, whenever manifestly illegal or unjust, reviewed and corrected. That opportunity has already been afforded to the petitioner, and without stronger reasons than any yet presented to the committee, they are indisposed to disturb a decision concurred in both by the First Comptroller and Court of Claims. They therefore ask to be discharged from the further consideration of the case, with the recommendation that the claim be rejected.

IN THE SENATE OF THE UNITED STATES.

JANUARY 25, 1859.—Ordered to be printed.

Mr. CLAY made the following

R E P O R T .

[To accompany bill S. 526.]

The Committee on Pensions, to whom was referred the petition of Elizabeth Spear, widow of Thomas Williams, deceased, a private in Captain H. W. Jernigan's company, for a pension, having had the same under consideration, submit the following report:

It appears from the evidence before the committee that the petitioner was married to the late Thomas Williams, in the year 1820; that her said husband served during the Creek war as a private in Captain Jernigan's company of volunteers, and was killed in the battle of Ichawanochawa, on the 25th day of July, 1836; that the petitioner married again in December, 1837, one Washington Spear, who died in 1854, leaving her again a widow with six children, the issue of her first marriage.

The fact that the petitioner's husband died as alleged is attested by the testimony of John Grimes, R. M. Copeland, and Henry Anderson, personally cognizant of the circumstances.

Your committee are of the opinion that the request should be granted, and therefore report a bill for the relief of the petitioner.

IN THE SENATE OF THE UNITED STATES.

JANUARY 26, 1859.—Ordered to be printed.

Mr. TRUMBULL made the following

R E P O R T .

[To accompany joint resolution H. R. No. 21.]

The Committee on the Judiciary, to whom was referred House joint resolution No. 21, for the relief of Hall Neilson, having had the same under consideration, report :

The object of this joint resolution is to relieve a purchaser from the United States of a lot of land, with a steam-mill thereon, from the payment of interest on his obligations given for the property, on the ground that, in consequence of disputes about the title, he had not been permitted to enjoy the property as fully as he would otherwise have done, although the title has eventually turned out to be perfect, and he has all the time had possession of the premises. The original contract of purchase, made in 1828, was for a conveyance with general warranty. This contract was subsequently, and after the purchaser had been in possession for thirteen years, modified by an agreement entered into by mutual consent and on due consideration, whereby the *purchaser* agreed to accept a deed with special warranty. Had there been a just claim for relief under the original contract, it was surrendered for a full consideration by the terms of the agreement voluntarily entered into thirteen years afterwards. Your committee can see no foundation either in law or equity for the relief sought, and recommend that the joint resolution be rejected.

IN THE SENATE OF THE UNITED STATES.

JANUARY 26, 1859.—Ordered to be printed.

M. HALE made the following

REPORT.

[To accompany bill S. 533.]

The Committee on Naval Affairs to whom was referred the memorial of Ann Scott, have had the same under consideration and report:

The memorialist alleges that she is the widow of the late William B. Scott who was appointed navy agent at Washington city in the year 1834, and for the faithful performance of the duties of which office he gave the bonds required; that in the year 1839, in addition to his duties as navy agent he was charged with the payment of navy pensions, and in consequence was required to increase the penalty of his bond under separate sureties as navy pension agent as well as to employ extra force in his office, for which no provision was made at the time of his appointment, and that he continued so to disburse the amounts due to said pensioners until June 5, 1849, when he ceased to be navy agent.

Your memorialist further alleges that judgment was obtained against her said husband by the United States, for the sum of \$6,000, or thereabouts, being money retained by him on account of services rendered in the disbursement of pensions; and that he, notwithstanding the uniform practice of allowing to other pension agents (an office entirely distinct from that of navy agent) a percentage on the disbursements made by them, was debarred an offset to said judgment in his claim for commissions for similar labor and responsibility; and further, that in order to satisfy said judgment it was necessary to sacrifice property to which she was entitled in her own right.

The memorialist, therefore, prays that the accounts of her said husband may be adjusted and settled, after allowing therein such commission as has been allowed to his successor, who went into the office of navy agent with the duty of pension agent attached thereto at the time of his appointment, and at his acceptance of said office, which, as heretofore shown, was not the case at the time of the appointment of her husband.

From facts before your committee it appears that the said William B. Scott, besides performing the full duty of navy agent, as defined at the time of his appointment, and other onerous duties devolved upon him by the Navy Department in *payments made by him to contractors who, by the terms of their contracts, were to be paid at other places than at Washington, and by other agents*, disbursed, during the period in which he acted as pension agent—about ten years—the sum of \$179,491 32.

From the very large additional risk, responsibility, and labor devolved upon the said William B. Scott by these new duties, for the proper performance of which separate bond was required and given, as well as the losses of property occasioned to him thereby; and from the fact that it was not a part of his office at the time of his appointment as navy agent, as well as the further fact that his successor was allowed and paid a commission for similar services, your committee deem this a case of peculiar hardship, and that in justice and equity the memorialist is entitled to the relief from Congress she prays, for which the accompanying bill is reported, with the recommendation that it do pass.

IN THE SENATE OF THE UNITED STATES.

JANUARY 26, 1859.—Ordered to be printed.

Mr. MALLORY submitted the following

R E P O R T .

The Committee on Naval Affairs, to whom was referred the petition of Joseph Humphries, have had the same under consideration, and report :

This petition was before your committee at the last session of Congress, and after consideration was reported adversely upon, and the committee discharged. At the present session it is recommitted, and your committee, after again considering the subject fully, are of opinion that the prayer of the petitioner should be rejected, and therefore report adversely, with the request that they may be discharged from its further consideration.

IN THE SENATE OF THE UNITED STATES.

JANUARY 27, 1859.—Ordered to be printed.

Mr. SHIELDS made the following

REPORT.

[To accompany Bill S. 537.]

The Committee on Revolutionary Claims, to whom was referred the petition of Frederick Vincent, administrator of James Le Caze, surviving partner of Le Caze & Mallet, having had the same under consideration, report:

It appears that the sum of \$4,890 82 was due to Le Caze & Mallet on the 1st of July, 1784, for advances made and supplies furnished to the United States during the revolutionary war, under an adjustment by the superintendent of finance. This balance was duly stated upon the books of the confederation under that date, and was reported to Congress with a view to providing for its payment.

In view of the inability of the government to liquidate these demands, Congress, on the 3d of June, 1784, enacted "That an interest of six per cent. per annum shall be allowed to all creditors of the United States for supplies furnished or services done from the time that payment became due." In 1790, the government still being unable to pay these claims, Congress, by act of August 4, 1790, authorized the funding of these debts by a subscription to a loan, as therein provided. By the act of May 30, 1794, these debts being yet unsettled, Congress extended the provisions of the act of 1790, declared that interest shall be allowed upon all registered claims, whether subscribed or not, and these provisions were continued by subsequent enactments, from time to time, to December 31, 1797.

This debt was registered upon [transferred to] the books of the treasury of the present government in 1794.

In consequence of the death of Le Caze & Mallet, as will be seen by reports heretofore made in this case by the committee, it appears that no demand for payment of this claim was made from 1797 to December 31, 1844; and the committee are unwilling to allow interest during that period, it being assumed that the government was always, after 1797, ready to pay its just debts when called upon. They have therefore directed a settlement to be made under the positive provisions of the act of 1790, above referred to, with an

allowance of interest from December, 1844, when the administrator made demand for payment, as exhibited by the records of this case. On January 31, 1855, Congress passed an act providing for the payment of the original debt, but omitting the interest; and the committee, considering the claim as justly entitled to interest under the several acts before cited, as well as from the date of demand in 1844, report a bill accordingly.

IN THE SENATE OF THE UNITED STATES.

—
JANUARY 28, 1859.—Ordered to be printed.
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Mr. BROWN submitted the following

REPORT.

The Committee on the District of Columbia, to whom was referred the petition of sundry citizens, property holders in the District of Columbia, praying an amendment of the laws relating to landlords and tenant, report:

That they have had the same under consideration, and have come to the conclusion that no such change in the existing laws as is asked for by the petitioners ought to be made. For the grounds on which this conclusion is based they refer to the subjoined letter of J. M. Carlisle, an eminent lawyer of this city, and at present the attorney for the corporation of Washington.

—
WASHINGTON, *January 27, 1859.*

MY DEAR SIR: I have your favor of this date, submitting to me a memorial of sundry "property holders" of this District, praying an amendment of the laws in force here touching the relations of landlord and tenant; and also a bill founded on the memorial; and requesting my opinion upon two points, viz:

"1st. Whether the bill meets the prayer of the petitioners?"

"2d. Is it such a bill as, in view of the present relations between landlord and tenant in this District, ought to pass?"

As to the first inquiry: The petitioners, among whom I recognize a number of our most respectable citizens, describe themselves as "*property holders* in the District of Columbia." Their prayer is, in substance, for a new and summary remedy for landlords against tenants. The bill seems to me to go as far, and to be as stringent and effectual, as it could be well made, in attaining this object.

Upon the second inquiry: I have no doubt that such a bill, and even one more stringent, would be acceptable to a majority of the landlords in this city; and probably the summary powers with which

it proposes to invest them would not generally be used unjustly or oppressively. I myself am not, and do not expect to be, anybody's tenant, but on the contrary have divers tenants of my own; but from my knowledge of the existing laws, I do not concur with the petitioners in thinking that the proposed amendment of the law is necessary for the protection of our rights, while it seems to me that it is unnecessarily harsh and otherwise objectionable with respect to by far the largest class of the community—the tenants.

That you and your committee may judge of this for yourselves, it is proper that I should state to you the existing law upon the subject.

By the act of assembly of Maryland, 1793, ch. 43, in force in this District, "*a summary mode of recovering the possession of lands and tenements holden by tenants,*" &c., &c., is provided.

By this statute the landlord is relieved from the necessity of instituting a regular action of ejectment against his tenant holding over; and is authorized to make application to any two justices of the peace for the county, and upon making satisfactory proof of the tenancy, and that it has been terminated, and that one month's notice, within the term, has been given, that the landlord requires possession at the end of the term, (all of which is *ex parte*,) the justices may issue their warrant to the marshal to summon a jury, &c.; and to summon the tenant to appear on the fourth day thereafter on the premises, to show cause, if any there be, why restitution should not be awarded; and upon the case made by the landlord (on the preliminary application) being found by the jury, the justices are by the terms of the law commanded to issue their warrant for immediate restitution, and execution for the costs, without any provision for appeal, or delay of any sort, except in the single case of a conflicting claim to the reversion being interposed in the manner provided by the statute.

You will perceive that the present bill is founded upon *this existing statute*, the defect in which has always seemed to me that it is so summary as not to afford to either party any right of appeal, whereas very often the whole controversy depends on matter of law which neither the justices nor the jury know anything about. But in the long run, in a practice of over twenty years, and very many cases in which I have alternately represented the landlord and the tenant, I think justice is administered substantially; and any amendment giving the right of appeal would in effect destroy the value of the remedy in respect to its being summary, unless it were accompanied with onerous provisions touching the appeal, with which few could comply, among the tenants at least.

The statute in question is well settled (from its passage to the present day) to apply to tenancies from year to year and tenancies for a less term than a year as well as to tenancies for a term of years or at will.

In tenancies for a term of years or for any fixed and definite term no notice is necessary to bring the tenancy to an end, but the notice of one month is necessary in order to take advantage of the summary remedy.

In all other tenancies the notice is regulated by the common law, by custom, or by the agreement of the parties. If I let a house from year to year and make no stipulation with the tenant as to the notice required to terminate our relations, I must give him six months' notice; and so, if he desire to quit, he must give me six months' notice. But *we may stipulate for any less term of notice. In this respect landlords have complete protection in their own hands; and the tenancy being thus terminated, you perceive that there is an existing remedy, complete, adequate, and summary.*

The bill proposes to terminate these tenancies in all cases, on three months' notice and this *with express reference to "TENANCIES NOW EXISTING,"* and which have been contracted with reference to the law in that behalf existing at the time of the contract. I need do no more than call your attention to this feature, which seems wholly inadmissible. It seems to me that any law in respect of the notice which *shall terminate a tenancy* ought to be carefully restricted to *tenancies hereafter created*; and, as I have said, *notice is a matter entirely within the power of the parties to regulate by their contract.*

The provision for terminating a tenancy, and for summarily ejecting the tenant upon twenty days' default in payment of his rent, seems to me remarkably harsh. I do not perceive that at this day there is any particular reason for further distinguishing landlords from any other class of creditors, that distinction having originated in the feudal system alone, and still continuing in the summary remedy of distress.

As I observe that your letter refers to my official position as corporation attorney, I think it proper to add that I have no authority, express or implied, to speak for anybody but myself in this matter.

I remain, with the highest respect and regard, very truly yours,
J. M. CARLISLE.

Hon. A. G. BROWN,
Chair'n Com. on District of Columbia.

P. S. As to tenancy for less than a year, they are determinable as at common law, *e. g.*, a monthly tenancy, by a month's notice, &c.

J. M. C.

IN THE SENATE OF THE UNITED STATES.

JANUARY 29, 1859.—Ordered to be printed.

Mr. DAVIS made the following

REPORT.

[To accompany joint resolution S. 64.]

The Committee on Military Affairs and the Militia, to whom was referred Senate resolution No. 64, having had the same under consideration, report :

This resolution extends the provisions of the 5th section of the act of July 19, 1848, to the 3d regiment of Missouri volunteers, called out by the President in 1846 for twelve months, and discharged before the expiration of their term of enlistment.

The effect of this resolution would be to give three months' extra pay to this regiment, which was enrolled at St. Louis, Missouri, on the 14th of August, and discharged at Fort Leavenworth on the 1st of October of the same year, (1846,) receiving their pay and bounty land in consideration of their services.

The section of the act now proposed to be amended granted three months' extra pay to all the officers, &c., engaged in the military service of the United States *in* the war with Mexico, provided it should "only apply to those who have been in actual service during the war." It must be obvious that Congress, in passing this act, intended to provide only for troops returning to their homes from the seat of war, worn down by its fatigues and unable at once to procure other employment. The act itself only extended its benefits to those in the service *in* the war, and it is not to be presumed that the proviso, which is generally understood to limit the section, should embrace a greater number of persons than the act to which it is appended.

The Missouri volunteers did not enlist with any expectation (certainly without any promise) of receiving this extra pay, and the law was passed after they had been discharged, and after every contract between them and the government had long since been at an end.

At the date of the act it was known that many companies of volunteers had been received during the Mexican war and discharged without performing any active service—without being *in* the war, and for the sole purpose of excluding such from the benefits of this

act the proviso was adopted. Nor does it seem reasonable or just that men who performed no other service than that stated above should receive the same extra allowance as those who faced the enemy in the enemy's country and suffered all the dangers and privations incident to battle field.

The committee report the bill back to the Senate, with the recommendation that it do not pass.

IN THE SENATE OF THE UNITED STATES.

JANUARY 31, 1859 —Ordered to be printed.

Mr. MALLORY submitted the following

REPORT.

The Committee on Naval Affairs, having duly considered the recommendation of the Secretary of the Navy, transmitted to Congress by the President of the United States, for the construction of naval vessels, report:

The wisdom and policy of fostering our navy were never more obvious than at this moment, when the naval powers of Europe are rapidly augmenting their already gigantic services.

Sound policy dictates to us, not the organization of large fleets or the construction of numerous ships, but that our vessels, limited in number, should, in every case, be the most perfect of their class.

In construction and equipment we must keep fully up with the times, and every successive frigate should be an improvement upon her predecessor, not only in our own, but in every other service.

Within the last fifteen years the application of steam as a motive power to naval vessels; their improved armament of heavy guns, equally applicable to shot and shell; their increased size and improved models, have revolutionized the character of naval warfare, and diminished, in a remarkable manner, the inequality between frigates and forts.

The ability to control steamships with formidable batteries at all times, regardless of wind or tide, has awakened serious doubts of the defensibility against naval attacks of harbor fortifications which have heretofore been regarded as superior to such assaults; and the ability possessed by France and Great Britain alike to concentrate and precipitate upon any point of our vast Atlantic and Gulf seaboard, on any pre-arranged day or hour, fleets of heavy steamers, and to enter our bays and ports against adverse winds and tides by day or by night, illustrates most strikingly the augmented power which steamships give to a naval people.

From the character of the Gulf of Mexico, and the immense trade which floats upon its bosom, it is evident that the first naval contest in which this country shall ever be engaged will be in its waters. A vast commerce, already valued at two hundred and fifty millions of dollars, annually threads its way between the Cuba and Florida shores—

a strait which six heavy steamships may bridge across and speak each other by signals every twenty minutes.

Either of the great naval powers of Europe, in the event of hostilities with us, could, with her present steam fleets, furnish such a bridge without materially weakening her naval forces.

By the leading naval authorities of England, naval war vessels, moved by sails alone, are regarded as obsolete; and we are called upon at once to act upon the idea that steam power is no longer to be regarded as the auxiliary, but as the primary power, and sails as furnishing the auxiliary power. We must constantly aim to attain a combination in our ships of each class of the heaviest known battery and the maximum speed possessed by any ships of that particular class; for, when attained, our sloops and frigates must, under the control of equal heads and hands, prove superior to the sloops and frigates of other navies.

The present vast steam navy of Great Britain has been constructed within a few years.

In February, 1840, Lord Colchester brought to the notice of the House of Commons the deplorable weakness of the navy, and he said "the whole force on the home station consists of three guard ships, manned by a third of their complement, and therefore incapable of putting to sea; *one frigate of 36 guns, and some schooners.* There are two sail of the line at Lisbon, twelve in the Mediterranean, and one or two in other quarters of the globe—in all, only twenty."

Your committee, in recommending the construction of ten steamships of war, in accordance with the report of the Secretary of the Navy, deem it proper to submit the following succinct statement of the steam navy of Great Britain, and to contrast it with our own.

From this comparison, it will be seen that we not only have fewer guns afloat in proportion to our commercial tonnage than we had a quarter of a century ago, but that our navy, in ships and guns, is weaker, in comparison with that of Great Britain, than it was at the close of the war of 1812. Perhaps a single reference will illustrate this. In 1857 our entire navy afloat comprised 29 vessels, carrying 628 guns, and these were scattered all over the globe; while, at the same time, Great Britain had upon our own coasts 34 vessels, carrying 794 guns.

REPORT

OF THE

COMMITTEE ON NAVAL AFFAIRS,

ON THE

CONSTRUCTION OF NAVAL VESSELS.

State of the British screw

Ships-of-the-line.	Guns.	Calibre.	Tons.	Length.	Breadth.	Nominal horse power.	Number of men.	Station.
SCREW STEAM THREE DECKERS, (TEN IN NUMBER.)								
First class.								
Howe.	121	None of less than a 68-pounder.	4,600	Feet. 300	Feet. 62	1,000	.....	.....
Victoria.	121		.....	.....	.....	.....	.....	.....
Second class.								
Duke of Wellington.	131	Weight of broad-side 2,360 lbs. *(See note.)	3,759	278	60	700	.....	First class steam reserve at Portsmouth. Flag-ship Mediterranean. ...
Marlborough.	131		4,000	283	61	800	1,100	
Prince of Wales.	131	.....	.....	.....	.....	.....	.....	.....
Royal Albert.	121	.....	3,462	270	60	500	1,050	Flag-ship of the channel squadron. Fitting for first class steam reserve, Portsmouth.
Royal Sovereign.	131	.....	3,760	278	60	800	.....
Third class.								
Royal Frederick.	101	.....	3,099	246	60	.....	.....	.....
Royal George.	102	.....	2,616	.....	.....	400	.....	First class steam reserve at Sheerness.
Windsor Castle.	101	.....	3,099	246	60	.....	.....	Is having her engines fitted at Devonport.
SCREW STEAM TWO-DECKERS.								
First class.								
Conqueror.	101	.....	3,283	.....	.....	800	970	Mediterranean.
St. Jean D'Acre.	101	.....	3,200	.....	.....	600	.....	First class steam reserve at Devonport.
Donegal.	101	.....	.....	.....	.....	800	.....	Building at Devonport.
Gibraltar.	101	.....	.....	.....	.....	800	.....	.....do.....
Duncan.	101	.....	.....	.....	.....	800	.....	Building at Portsmouth.
Second class.								
Agamemnon.	91	.....	3,074	265	55	600	.....	Portsmouth steam reserve, first class.
Algiers.	91	.....	3,165	260	55	600	.....	First class steam reserve, Portsmouth.
Exmouth.	91	.....	3,108	260	55	400	450	Guard ship of steam reserve, Devonport.
Hannibal.	91	.....	3,136	.....	.....	450	450	Guard ship of steam reserve, Portsmouth.
Hero.	91	.....	3,148	264	55	600	.....	Sheerness steam reserve. ...
James Watt.	91	.....	3,083	285	55	600	.....	Steam reserve at Devonport.
Orion.	91	.....	3,281	275	56	600	860	Channel squadron.
Princess Royal.	91	.....	3,129	260	55	400	860	Mediterranean.
Renown.	91	.....	3,317	280	56	800	860	Channel squadron.
Victor Emanuel.	91	.....	3,290	.....	.....	400	860	.....do.....

* Note.—Of the remaining ships, no detail of the calibre and class of guns compos-

steam navy in 1858.

Where built, &c.	Remarks.																												
<p>Now building at Pembroke; will be launched most probably in 1859.. Building at Portsmouth; will be launched most probably in 1859. ...</p> <p>First designed as a sailing ship; afterwards lengthened and converted into a screw ship. Sails very fast, and steams 10 knots an hour Built at Portsmouth in 1855; commissioned February, 1858. Reputed to be the finest three-decker now afloat. Now building at Portsmouth; will be of the same size and dimensions as the Marlborough. Built at Woolwich in 1854. Plan first designed as a sailing ship, and altered into a screw ship. Commissioned August, 1858. Built at Portsmouth in 1857. Is of the same dimensions and built after the same plan as the Duke of Wellington.</p> <p>Built as a sailing ship at Portsmouth, but never launched; ordered to be adapted for screw propeller. Same proportions as Windsor Castle. Built as a sailing ship at Chatham in 1827. Plan after Caledonia; converted into a screw ship at Chatham in 1853; poop removed in 1855. Is a dull sailing ship, and steams 8 knots an hour; has proved a failure mostly on account of her rolling propensities. Built at Pembroke in 1858. First designed as a sailing vessel, but afterwards altered to a screw ship; formerly called the Victoria; will most probably be found top-heavy.</p> <p>Built at Devonport in 1855; commissioned December, 1855. Is a very fine ship, and both sails and steams fast. Built at Devonport in 1853. Is a fine ship, but does not sail or steam as fast as was expected. On improved lines of the Conqueror; nearly ready for launching. On improved lines of the Conqueror; lately commenced. Do. do. do.</p> <p>She is the first line-of-battle ship that was designed as a screw ship; sails and steams remarkably well. Lately fitted to carry the Atlantic telegraph cable, and requires refitting. Built at Woolwich in 1852. Built at Devonport in 1854. First designed as a sailing vessel, afterwards lengthened and converted into a screw ship. Fitted in 1857 with new engines of 600 horse-power. Built at Devonport in 1854. Is of the same dimensions and built after the same designs as the Algiers. Commissioned Feb., 1858. Built at Deptford in 1854. Plan the same as the Algiers. Commissioned February, 1858. Built at Chatham in 1858. Has not yet been commissioned. Built at Pembroke in 1853. Formerly called the Audacious. Engines proved very defective during her last commission, and new ones have been fitted. Built at Chatham in 1854; commissioned June, 1858. Is a very splendid ship, and was the fastest sailing ship in the Baltic fleet; steams 12½ knots an hour. Built at Portsmouth in 1858. Plan the same as the Algiers. Commissioned July, 1858. Built at Chatham in 1857; commissioned November, 1857. Is the largest and finest two-decker in the navy. Built at Pembroke in 1855, after the Orion; commissioned July, 1858.</p>	<p><i>Screw steam three-deckers.</i></p> <p>"These large ships are very much disliked by seamen on account of the heaviness of their spars." On account of the defects noticed in some of the ships originally built as sailing vessels, the sailing three-deckers, now converting, are to have their upper decks removed.—(See U. Service Journal, October, 1858.)</p> <p><i>Screw steam two-deckers.</i></p> <p>"The Conqueror, Renown, Orion, and Victor Emanuel, are the finest of our screw two-deckers; they are all fast sailing ships, and steam 11½ knots an hour." "The ships included in the first four classes, carrying from 80 to 100 guns each, are very good ships of which to compose fleets, but owing to their large size and great draught of water they cannot be employed in harassing the enemy's coast and destroying forts." "The Agamemnon and Sans Pareil were the only large screw ships that were brought into action at the bombardment of Sebastopol."</p> <p><i>Summary of screw ships-of-the-line.</i></p> <table><tr><th></th><th>In commission for active service.</th><th>In commission for harbor service.</th><th>In ordinary.</th><th>Build'g or converting.</th><th>Ordered to be built.</th><th>Total.</th></tr><tr><td>3-deckers....</td><td>2</td><td>4</td><td>4</td><td>....</td><td>10</td><td></td></tr><tr><td>2-deckers....</td><td>9</td><td>13</td><td>12</td><td>14</td><td>3</td><td>51</td></tr><tr><td>Total.....</td><td>11</td><td>13</td><td>16</td><td>18</td><td>3</td><td>61</td></tr></table>		In commission for active service.	In commission for harbor service.	In ordinary.	Build'g or converting.	Ordered to be built.	Total.	3-deckers....	2	4	4	10		2-deckers....	9	13	12	14	3	51	Total.....	11	13	16	18	3	61
	In commission for active service.	In commission for harbor service.	In ordinary.	Build'g or converting.	Ordered to be built.	Total.																							
3-deckers....	2	4	4	10																								
2-deckers....	9	13	12	14	3	51																							
Total.....	11	13	16	18	3	61																							

ing their armament is given in the journal from which this table was compiled.

British screw steam

Ships-of-the-line.	Guns.	Calibre.	Tons.	Length.	Breadth.	Nominal horse power.	Number of men.	Station.
SCREW STEAM 2-DECKERS.								
<i>Second class—Cont'd.</i>								
Atlas	91			<i>Feet.</i>	<i>Feet</i>			
Hood	91							
Defiance	91							
Revenge	91							
Edgar	91							
Anson	91							
Bulwark	91							
Zealous	91							
<i>Third class.</i>								
Aboukir	90		2,627	230	54	400		Steam reserve at Devon-port.
Cæsar	90		2,761			400	850	Recently at Honduras.....
Nile	90		2,599			500	850	Flag-ship at Queenstown..
Neptune	90		2,705					
Queen	90		3,083					
St. George	90		2,719					
Royal William	90		2,698					
Trafalgar	90		2,694					
<i>Fourth class.</i>								
Brunswick	80		2,484	210	55	400	750	Channel squadron
Centurion	80		2,590			400	750	Mediterranean.....
Colossus	80		2,589			400		First class steam reserve at Sheerness.
Cressy	80		2,537			400	420	Guard ship steam reserve at Sheerness.
Goliath	80		2,599	220	57			Steam reserve at Sheerness.
Irresistible	80							
Lion	80		2,588			400		Steam reserve at Devon-port.
Majestic	80		2,566	220	54	400		Sheerness steam reserve...
Mars	80		2,576			400		.....do.....do.....
Meeanee	80		2,600			400		.....do.....do.....
<i>Fifth class.</i>								
Sans Pareil	70		2,334	200	52		670	China.....
SCREW BLOCK SHIPS.								
<i>Sixth class.</i>								
Ajax	60		1,761	176	49	450	328	Coast guard instruction ship at Kingstown.
Blenheim	60		1,747	181	49	450	328	Coast guard ship at Portland.

navy in 1858—Continued.

Where built, &c.	Station.
<p>Building at Chatham. Do. Building at Pembroke. Do. Building at Woolwich. Ordered to be built at Woolwich. Ordered to be built at Chatham. Ordered to be built at Pembroke.</p>	<p>These five ships are building on the designs of the <i>Renown</i> and the <i>Orion</i>, favorite ships, whose qualities have been tested.</p>
<p>Built as a sailing ship at Devonport in 1848; converted into a screw ship in 1858. Built at Pembroke in 1853, and designed as a sailing ship; altered to a screw ship and commissioned June, 1858; fine wall-sided ship, with a magnificent stern, and sails fast. Built as a sailing ship at Devonport in 1854; converted into a screw ship. Commissioned March, 1858.</p>	<p>Have been ordered to be cut down and converted into screw two-deckers. { At Portsmouth. At Sheerness. At Devonport. At Devonport. At Chatham.</p>
<p>Built at Pembroke in 1855 as a sailing ship; afterwards altered to a screw ship. Commissioned December, 1855. Built at Pembroke in 1844, as a sailing ship; converted into a screw ship at Devonport, 1855. Commissioned January, 1856. Built in 1848 as a sailing ship; converted into a screw at Portsmouth, 1854. Built at Chatham in 1853; designed as a sailing ship, but afterwards altered to a screw ship; is a fast sailing ship.—Commissioned March, 1858. Built as a sailing ship at Chatham, 1842; altered to a screw ship in 1857. Building at Chatham; is of the same size and after the same designs as the <i>Majestic</i>.—(See <i>Majestic</i>.) Built as a sailing ship at Pembroke in 1848; converted into a screw ship at Devonport in 1858. Built at Chatham in 1853; designed as a sailing ship, and afterwards altered to a screw ship. Built at Chatham as a sailing ship in 1848, and there altered to a screw ship in 1856. Built of teak, as a sailing ship, at Bombay in 1849; altered to a screw ship at Sheerness in 1858.</p>	
<p>Built at Devonport in 1851; originally designed for an 84 sailing ship, after the old <i>Sans Pareil</i>, but afterwards altered to a screw ship. She was the first screw line-of-battle ship built, and was for some time a failure; but having ten of her guns taken off and her engine changed for one of 400-horse power, is now found a serviceable vessel. Commissioned in April, 1855.</p>	
<p>Built as a sailing 74-gun ship at Blackwall in 1809; converted into a screw block ship, and fitted with a new bow at Cowes in 1847. Is a dull sailing ship and slow steamer. Commissioned February, 1858. Built as a sailing 74-gun ship at Deptford in 1813; converted into a screw block ship at Sheerness in 1846; slow sailing and steam ship. Commissioned February, 1858.</p>	<p><i>Screw block ships.</i></p> <p>"The small screw block ships were found the most serviceable in the Baltic; their small draught of water enabled their being taken up to Bomarsund, and also to engage the forts at Sweaborg; while our fine screw two-deckers, and even our fine fifty-gun screw frigates, were</p>

British screw steam

Ships-of-the-line.	Guns.	Calibre.	Tons.	Length.	Breadth.	Nominal horse power.	Number of men.	Station.
SCREW BLOCK SHIPS.								
<i>Sixth class—Cont'd.</i>								
Cornwallis.....	60	.....	1,809	<i>Feet.</i> 184	<i>Feet.</i> 50	*900	328	Coast guard ship at Hull....
Edinburgh.....	60	.....	1,772	180	49	450	328	Coast guard ship at Leith..
Hastings.....	60	.....	1,763	182	49	*900	328	Coast guard instruction ship at Liverpool.
Hawke.....	60	.....	1,754	182	49	*900	328	Coast guard instruction ship at Queenstown.
Hogue.....	60	.....	1,750	184	48	450	328	Coast guard instruction ship in the Clyde.
Pembroke	60	.....	1,758	182	49	*900	328	Coast guard instruction ship at Harwich.
Russel.....	60	.....	1,751	182	49	*900	328	Coast guard instruction ship at Falmouth.

* High pressure.

navy in 1858—Continued.

Where built, &c.	Remarks.
<p>Built of teak, at Bombay, as a 74-gun sailing ship; converted into a screw block ship at Devonport in 1855. Commissioned December, 1855.</p> <p>Built at Rotherhithe in 1811 as a sailing ship; converted into a screw block ship in 1849; is the most serviceable of the block ships. Commissioned March, 1858.</p> <p>Built of teak, as a 74-gun sailing ship, at Calcutta in 1818; converted into a screw block ship at Portsmouth in 1855. Commissioned April, 1857.</p> <p>Built as a 74-gun sailing ship at Woolwich in 1830; converted into a screw block ship at Chatham in 1855. Commissioned December, 1856.</p> <p>Built as a 74-gun sailing ship at Deptford in 1811; converted into a screw block ship at Blackwall in 1847; is a good sailing ship, steams well for a block ship. Commissioned March, 1858.</p> <p>Built as a 74-gun sailing ship at Blackwall in 1812; converted into a screw block ship at Portsmouth in 1855. Commissioned March, 1858.</p> <p>Built as a 74-gun sailing ship at Deptford in 1822; converted into a screw block ship at Sheerness in 1855. Commissioned in 1858.</p>	<p>found too large for these services. Experience should, therefore, have taught us that, while gradually increasing the number of our large two-deckers, of which to form fleets to meet the enemy at sea or blockade his fleet in harbor, we ought at the same time to have built smaller two-deckers, improving on the construction of the old block ships, so as to make them sail and steam fast, and also be of a light draught of water. These small ships would, in any future war, be found of infinite service in backing up our gun-boats while attacking forts, &c. At present the new screw frigates building are nearly double the size of the old block ships, and will consequently draw a great deal more water."</p>

State of the British screw steam navy, (screw steam frigates, screw

Screw steam frigates.	Armament.	Tons.	Depth of water.	Length.	Breadth.	Horse power.	No. of men.
FIRST CLASS (HEAVY ORD- NANCE SCREW FRIGATES.)							
Diadem .....32 guns.	Main deck: 26 10-inch shell guns of 87 cwt., 10 32-pounders of 53 cwt., 2 68-pounder pivot of 95 cwt.	2,479	<i>Feet.</i> 22	<i>Feet.</i> 240	<i>Feet.</i> 48	800	470
Doris .....32 "	No detail given	2,479	.....	240	48	800	.....
Mersey .....40 "	Reported to carry 40 guns, all 68-prs. of 95 cwt.	3,726	.....	336	52	1,000	.....
Orlando .....50 "	It is not known what armament this ship will carry, as, when first designed, it was stated to be 36 guns, whereas, on the navy list, it is altered to 50.	3,700	.....	330	52	1,000	.....
Ariadne .....32 "	The same armament as the Diadem.	.....	.....	.....	.....	800	.....
Galatea .....26 "	To carry 26 68-pounders.....	3,204	.....	280	*50	800	.....
SECOND CLASS.							
Chesapeake .....51 guns.	No detail given	2,384	.....	218	50	400	550
Emerald .....51 "	.....do.....	2,913	.....	237	53½	600	.....
Euryalus .....51 "	.....do.....	2,371	.....	218	50	400	550
Forte .....51 "	.....do.....	2,355	.....	212	50	400	.....
Immortalité.....51 "	.....do.....	2,860	.....	235	53	600	.....
Imperieuse .....51 "	.....do.....	2,357	.....	212	50	350	.....
Liffey .....51 "	.....do.....	2,658	.....	237	50	600	.....
Melpomene .....51 "	.....do.....	2,857	.....	237	53	600	.....
Shannon .....51 "	.....do.....	2,667	.....	235	50	600	570
Topaze .....51 "	.....do.....	2,651	.....	237	50	600	.....
Aurora .....51 "	.....do.....	As Euryalus.....	.....	.....	To have	400	.....
Bacchante .....51 "	.....do.....	As Shannon.....	.....	.....	.....	600	.....
Narcissus .....51 "	.....do.....	As Emerald.....	.....	.....	.....	.....	.....
Undaunted .....51 "	.....do.....	.....	.....	.....	.....	.....	.....
THIRD CLASS.							
Arrogant .....47 guns.	Main deck: 12 8-inch guns and 18 32-pounders; upper deck: 16 32-pounders and 1 68-pdr. pivot gun.	1,872	.....	200	†45½	360	328
Amphion .....36 "	No detail given	1,474	.....	177	43	300	.....
Curagoa .....31 "	.....do.....	1,569	.....	210	42	300	350
Dauntless .....31 "	.....do.....	1,569	.....	218	40	580	.....
Termagant .....25 "	Main deck: 18 32-pounders; upper deck: 6 8-inch guns and 1 68-pdr. pivot gun.	1,547	.....	210	†40½	310	.....
Tribune .....31 "	.....do.....	1,570	.....	.....	.....	300	350

* Depth of hold, 19 feet.

† Depth of hold, 29½ feet.

‡ Depth of hold, 25 feet.

steam corvettes, screw mortar ships, screw steam floating batteries.)

Station.	Where built, &c.	General remarks.
Commissioned August, 1857; channel squadron. First class steam reserve, Devonport. Fitting for commis'n at Portsmouth, November, 1858. Fitting for commission at Devonport.	Built at Pembroke, 1856; has Griffith's screw propeller; average speed 12½ knots an hour. Built at Pembroke, 1857. Built at Chatham, 1858. Built at Pembroke, 1858.	"The first class or heavy ordnance screw frigates were built to compete with the celebrated American screw frigates." It is objected to this class that "a ship of large tonnage should carry such an armament as to overpower a ship of smaller size. Now, the <i>Mersey</i> and the <i>Orlando</i> are nearly equal in size to the <i>Duke of Wellington</i> , screw 3-decker, and 400 tons larger than the <i>Renown</i> , (91.) screw 2-decker; but the captain of one of the above frigates would hardly venture on a close action with either of these line-of-battle ships if belonging to an enemy," &c. "The second class of screw frigates are all very fine ships, and seem to possess all the attributes required of a frigate, except a <i>light draught of water</i> . Some of these ships, as the <i>Emerald</i> , <i>Shannon</i> , &c., are quite a match for any of the smaller line-of-battle ships."
.....	Built at Deptford, 1858. Building at Woolwich, 1858.	
Commissioned July, 1857; E. Indies. First class steam reserve at Sheerness; has not yet been in commission.	Built at Chatham, 1855; steams 10½ knots an hour. Built at Deptford, 1856. Originally designed as a 60-gun sailing frigate; lengthened 32 feet and converted into a screw ship; average speed, 13 knots; is mentioned as "a very fine ship."	"Of the third class the <i>Arrogant</i> has already proved herself a most useful ship, as, during the late Russian war, her name was mentioned the most frequently in the <i>Gazette</i> . The <i>Amphion</i> was most actively employed in the Baltic; and the <i>Curacao</i> , <i>Dauntless</i> , and <i>Tribune</i> were of great service in the Black sea." "While the <i>Imperieuse</i> and <i>Euryalus</i> were not engaged, actively, with the enemy more than once or twice, the <i>Arrogant</i> and <i>Amphion</i> were constantly getting under fire." The writer of the foregoing article gives sound reasons for the increase of this class of vessels, which are applicable to our own case. (See United Service Journal for November, 1858, p. 353.)
Commissioned February, 1858; channel squadron, to proceed to the Mediterranean, and round the world. Steam reserve at Sheerness... Ordered to Portsmouth, to be fitted for commission. First class steam reserve at Portsmouth.	Built at Chatham, 1853; "is one of our crack frigates, and both sails and steams very fast; commissioned and fitted expressly for Prince Alfred, who is appointed to her as naval cadet." Built at Deptford, 1858. Built at Pembroke, 1858; same plan as <i>Emerald</i> . Built at Deptford, 1852; designed as a 60-gun sailing frigate, and afterwards altered to a screw frigate; is a favorite ship, and sails and steams well. Built at Devonport, 1856.	
First class steam reserve at Devonport. Portsmouth steam reserve.... Commissioned Sept'r, 1856; ordered home from E. Indies. Devonport steam reserve	Built at Pembroke, 1857. Built at Portsmouth, 1855; sails and steams fast. Built at Devonport, 1858. Building at Pembroke; nearly finished. Building at Portsmouth; ready to launch, November, 1858. Building at Devonport; half finished, Nov., '58. Ordered to be built at Chatham.	Summary of screw frigates. In comm'n for active service. 6 In comm'n for harbor service. 1 In ordinary 13 Building 5 Ordered to be built 1 Total 26
.....	
Commissioned March, 1858; coast guard instruction ship at Southampton. Refitting at Chatham.....	Built at Portsmouth, 1848; average speed, 8 knots an hour. Built at Woolwich, 1846; originally designed as a sailing vessel, but afterwards fitted with White's bow, and converted into a screw frigate; average speed, 7 knots an hour; sails very well.	
Commissioned Nov'r, 1857; Mediterranean. First class steam reserve, Portsmouth. Portsmouth steam reserve	Built at Pembroke, 1854; sail fast and steam 10½ knots an hour. Built at Portsmouth, 1848; is a fast sailing ship, and steams 10½ knots an hour. Built at Deptford, 1848. When first commissioned she had engines of 620-horse power, and attained a speed of 9½ knots an hour; but these were too heavy for her, and have been reduced to one-half.	
Commissioned 1856; ordered from China to the Pacific.	Built at Sheerness, 1853; first designed as a sailing 28-gun frigate, and afterwards altered to a screw frigate; sails and steams fast.	

State of the British screw

Screw steam corvettes.	Armament.	Tons.	Depth of water.	Length.	Breadth.	Horse power.	No. of men.
FIRST CLASS.							
Challenger, 22 guns.	No detail given	1,465	<i>Feet.</i>	<i>Feet.</i>	<i>Feet.</i>		Not stat.
Olio .....do....	.....do.....	1,471	.....	200	42	400	.....do....
Baccoon .....do....	Gun deck: 20 68-pounders; spar deck, 2 68-pounders, of 95 cwt., pivot guns.	1,462	.....	200	42	400	260
Barossa	No detail given .....	.....	.....	to be 250	Not stat.	.....	.....
Charybdis .....	.....do.....	.....	.....	.....	.....do....	.....	.....
Jason .....	.....do.....	.....	.....	.....	.....do....	.....	.....
Orpheus .....	.....do....	1,622	.....	225	40	.....	.....
Stork .....	.....do.....	.....	.....	.....	Not stat.	.....	.....
Wolverine .....	.....do.....	.....	.....	.....	.....do....	.....	.....
SECOND CLASS.							
Cadmus.....21 guns.	.....do.....	1,461	.....	.....	.....do....	400	.....
Cossack.....do....	.....do.....	1,388	.....	.....	.....do....	250	.....
Esk.....do....	.....do.....	1,154	.....	.....	.....do....	250	240
Highflyer.....do....	.....do.....	1,153	.....	192	36*	250	240
Pearl.....do....	.....do.....	1,461	.....	200	40	400	260
Pelorus .....do....	.....do.....	1,473	.....	200	40	400	260
Pylades .....do....	Upper deck: 20 8-inch guns, of 56 cwt., 9 feet long; and 1 68-pdr., of 95 cwt., and 10 feet long, pivot gun.	1,282	Aft, 19 ft.; for'd 17 ft.	198	38	350	(†)
Satellite.....do....	No detail given	1,465	.....	200	40	400	260
Scout.....do....	.....do.....	1,462	.....	200	40	400	Not stat.
Scylla .....do....	.....do.....	1,460	.....	200	40	400	.....do....
Tartar .....do....	.....do.....	1,389	.....	.....	.....	250	240
THIRD CLASS.							
Archer.....15 guns.	.....do.....	970	.....	180	33	200	175
Encounter.....do....	.....do.....	953	12‡	190	32‡	360	Not stat.
Malacca.....17 guns	.....do.....	1,062	.....	.....	.....	200, high pressure.	.....do....
Miranda.....15 guns.	.....do.....	1,062	.....	196	34	250	.....do....
Niger .....do....	.....do.....	1,072	.....	194	34	400	175

* Depth of hold, 22½ feet.

† Officers, 29; petty officers, 39, seamen, 112; boys, 31; marines, 29; total, 240.

‡ Depth of hold, 20 feet 10 inches.

steam navy, &c.—Continued.

Station.	Where built, &c.	General remarks.
Sheerness steam reserve ..... .....do.....do..... Commissioned November, 1857; Channel squadron.	Built at Woolwich, 1858. Built at Sheerness, 1858. Built at Chatham, 1857; sails very badly, and steams 10 knots an hour; found to be top-heavy, altogether inferior to the Pearl, of which she was supposed to be an improve- ment.	<i>Summary of screw steam corvettes.</i> In commission for active service.... 10 In ordinary 9 Building 4 Ordered to be built..... 2 Total..... 25
.....	Just commenced at Woolwich. At Chatham, ready to launch. Just commenced at Devonport. Half finished, at Chatham; in- tended to remedy the defects of the Raccoon and her class. Ordered to be built at Sheerness. Ordered to be built at Woolwich.	
Fitting for commission at Chat- ham. Third class steam reserve at Sheerness.	Built at Chatham, 1856. Built at Northfleet, 1854. This vessel being built for the Rus- sian government, was seized at the commencement of the late war, and brought into the navy. Built at Millwall, 1854.	
Commissioned March, 1856: China. Commissioned August, 1856; China.	Built at Blackwall, 1851.....	<p>"The Highflyer was tried in the channel against the Dauntless screw frigate, and, notwithstanding she sailed and steamed slower than the Dauntless, the Highflyer was considered as the most serviceable vessel, and several corvettes were ordered to be built on her lines" &c.</p>
Commissioned Dec., 1855, East Indies. Commissioned July, 1857; East Indies. Commissioned July, 1857; re- fitting at Calcutta previously to proceeding to the Pacific.	Built at Woolwich, 1855; steams 11½ knots an hour. Built at Devonport, 1857. Built at Sheerness, 1854; stows water, 45 tons, salt provisions for seven months, and bread for three months. Built at Devonport, 1855.	
Commissioned Sept., 1856; off Vancouver's island, Pacific. Never in commission; 1st class steam reserve, Sheerness. Not yet commissioned; Sheer- ness steam reserve. Commissioned October, 1854; West Indies.	Built at Woolwich, 1856. Built at Sheerness, 1856. Built at Northfleet, 1854; seized in 1854; like the Cossack.	
Commissioned May, 1858; west coast of Africa.	Built at Deptford, 1849; sails well, and steams 8 knots an hour.	
Refitting at Devonport.....	Built at Pembroke, 1846. This has been a very successful vessel; sails very fast, and steams 10½ knots an hour.	
3d class steam reserve, Sheer- ness.	Built of teak at Moulmein, 1853; sails well, but can steam only 7 knots an hour.	
Refitting at Sheerness	Built at Sheerness, 1851; sails well, and steams 10½ knots an hour.	
Commissioned May, 1856; sta- tion, China.	Built at Woolwich, 1848; sails and steams well.	

The Pylades, Esk, and Pearl were built after the Highflyer, and said to be improvements on that vessel. Towards the conclusion of the Russian war, the captains of some of these ships expressed their fears that, in case of close action, the guns of those ships would be disabled by the falling of the spars. To remedy this defect (which is common to all single-decked ships) the Raccoon was built with a spar deck, and strengthened at each end to bear a 68-pounder, she proving top-heavy. The Orpheus and Barossa are building as improvements.

"The Archer, Encounter, and Niger were the first steam corvettes built, and these being found to answer well, it was determined by the admiralty to improve on them, and the Highflyer was ordered to be built.—(See Highflyer.) The Miranda, Encounter, and Niger proved of great service in the White sea, sea of Azoff, and Canton river, their light draught of water permitting them to go where the larger corvettes could not."

State of the British screw

Name.	Armament.	Tons.	Draught of water.	Length.	Breadth.	Horse power.	Number of men.
SCREW MORTAR SHIPS.							
Eurotas.....12 guns..	No detail given .	1,168	<i>Feet.</i>	<i>Feet.</i>	<i>Feet.</i> Not stated ...	High pres. 200	not stated
Forth .....do.....	.....do.....	1,228	.....	.....	.....do.....	.....do....200	.....do....
Horatio.....8 guns..	.....do.....	1,090	.....	154	40	250	.....do....
Sea Horse ....12 guns..	.....do.....	1,212	.....	.....	.....	High pres. 200	.....do....
SCREW STEAM FLOATING BATTERIES.							
<i>First class.</i>							
Ætna.....16 guns..	.....do.....	2,000	9	186	48½ depth of hold 18½	.....do....200	.....do....
Erebus .....do.....	.....do.....	2,000	9	186	.....do.....	.....do....200	.....do....
Terror .....do.....	.....do.....	2,000	9	186	.....do.....	.....do....200	75
Thunderbolt.....do.....	.....do.....	2,000	9	186	.....do.....	.....do....200	not stated
<i>Second class.</i>							
Glatton.....14 guns..	.....do.....	1,469	8	172	44 depth of hold 14	.....do....150	.....do....
Meteor. ....do.....	.....do.....	1,470	8	172	.....do.....	.....do....150	.....do....
Thunder .....do.....	.....do.....	1,470	8	172	.....do.....	.....do....150	.....do....
Trusty .....do.....	.....do.....	1,468	8	172	.....do.....	.....do....150	.....do....

NOTE.—The foregoing list does not comprise a number of screw and paddle wheel steamers, gun-boats, steam-tugs, steam tenders, and storeships, which it was not deemed necessary to enumerate.

steam navy, &c.—Continued.

Station.	Where built, &c.	Remarks.																												
Sheerness.....	Built at Chatham in 1829, converted into a screw mortar ship at Sheerness in 1855.	<i>Summary of screw mortar ships and screw floating batteries.</i> <table><tr><th></th><th>In commission for active service.</th><th>In commission for harbor service.</th><th>In ordinary.</th><th>Building.</th><th>Ordered to be built.</th><th>Total.</th></tr><tr><td>Screw mortar ships.....</td><td>.....</td><td>.....</td><td>4</td><td>.....</td><td>.....</td><td>4</td></tr><tr><td>Screw floating batteries...</td><td>.....</td><td>1</td><td>7</td><td>.....</td><td>.....</td><td>8</td></tr><tr><td>Total.....</td><td>.....</td><td>1</td><td>11</td><td>.....</td><td>.....</td><td>19</td></tr></table>		In commission for active service.	In commission for harbor service.	In ordinary.	Building.	Ordered to be built.	Total.	Screw mortar ships.....	4	4	Screw floating batteries...	1	7	8	Total.....	1	11	19
	In commission for active service.		In commission for harbor service.	In ordinary.	Building.	Ordered to be built.	Total.																							
Screw mortar ships.....	4	4																							
Screw floating batteries...		1	7	8																							
Total.....	1	11	19																								
Devonport.....	Built at Pembroke in 1833, converted into a screw mortar ship at Devonport in 1855.																													
Third class steam reserve, Sheerness.	Built at Bursledon, 1807; lengthened and fitted as a mortar ship at Sheerness in 1855; sails and steams badly; has very bad accommodation for her crew.																													
Devonport.....	Built at Pembroke in 1830, converted into a screw mortar ship at Devonport in 1855.																													
Has not yet been commissioned. Steam reserve at Chatham.	Built at Chatham in 1856. This ship is framed and plated like an iron ship, then six inches of teak, and outside of all plates of four inches thick. She is spoon bowed, and her bottom is nearly flat.	<i>Remarks on the screw mortar ships.</i> <p>“These old frigates were never built to carry such a heavy armament, and their accommodation below is almost unbearable whilst the ship is under steam.”</p>																												
Portsmouth steam reserve....	Built at Glasgow in 1856. Plan as <i>Etna</i> .																													
Commissioned May, 1857; Bermuda.	Built at Newcastle in 1856. Plan as <i>Etna</i> .																													
Steam reserve at Chatham....	Built at Millwall in 1856. Plan as <i>Etna</i> .																													
Steam reserve at Portsmouth..	Built at Blackwall in 1855.	<i>Remarks on the screw floating batteries.</i> <p>“These batteries have not yet been tried in action to prove their utility. Recent experiments have rather shown that iron plates will not always offer resistance to heavy shot. Experienced naval officers seem to think they will be more useful in defending our ports than in attacking the fortifications of an enemy. Their speed is only four knots an hour.</p>																												
Do.....do.....	Built at Blackwall in 1855. Plan as <i>Glatton</i> .																													
Steam reserve at Chatham....	Do. do. do.																													
Do.....do.....	Do. do. do.																													

Steam screw ships of the

Name.	Armament.	Tons.	Draught of water.	Length.	Breadth.	Depth of hold.	Nominal horse power.	Complement of men.
SCREW FRIGATES.								
<i>First class.</i>								
Niagara	Has not yet been mounted.....	4,580	<i>Feet.</i>	<i>Feet.</i> 320	<i>Feet.</i> 55½	.....	699	....
Wabash, 40 guns.....	Spar deck, 2 10-inch pivot Dahlgren guns; 14 8-inch carriage guns, 63 cwt. Gun-deck, 24 9-inch Dahlgren guns.	3,900	.....	268½	51½	.....	466	....
Roanoke, 40 guns.....	Same as Wabash.....	3,400	F. 19½ A. 21.11	268½	52½	.....	466	....
Colorado, 40 guns .....	.....do.....	3,400	23½	268½	52½	.....	466	....
Merrimac, 40 guns.....	.....do.....	3,200	F. 23.8 A. 24.5	268½	51½	.....	466	....
Minnesota, 40 guns	Spar deck, 1 10-inch pivot Dahlgren gun; 14 8-inch, of 63 cwt. Main deck, 24 9-inch Dahlgren guns.	3,200	.....	8½	52½	.....	466	....
Franklin, 50 guns	Proposed armament.....	3,680	.....	270	54½	.....	699	....
Stevens' war steamer, 6 guns.	.....	4,663	.....	400	.....	.....	.....	.....
<i>Second class.</i>								
Brooklyn, 18 guns	2 10-inch pivot, 16 9-inch broadside, Dahlgren's pattern.	2,070	.....	.....	.....	.....	.....	.....
Lancaster, 22 guns.....	2 11-inch pivot, 20 9-inch broadside, Dahlgren's pattern.	2,360	.....	239	46	.....	.....	.....
Hartford, 14 guns.....	14 9-inch broadside, Dahlgren's pattern.	1,990	.....	230	44	.....	.....	.....
Pensacola, 19 guns.....	1 11-inch pivot, 18 9-inch broadside, Dahlgren's pattern.	2,158	.....	233	44½	.....	.....	.....
Richmond, 14 guns.....	14 9-inch broadside, Dahlgren's pattern.	1,929	.....	228½	42½	.....	.....	.....
San Jacinto, 13 guns .....	.....	1,446	F. 18 A. 18.7	216	37½	.....	330	.....
SCREW SLOOPS OF WAR.								
<i>Second class.</i>								
6 guns.....	2 11-inch pivot, Dahlgren; 4 32-pounds, of 57 cwt.	991	About	13	198	34	.....	334
3 guns.....	1 11-inch pivot, Dahlgren; 2 32-pounds, of 57 cwt.	.....	.....	10	188	31	.....	250
6 guns.....	2 11-inch pivot, Dahlgren; 4 32-pounds, of 57 cwt.	.....	.....	13	198	34	.....	334
6 guns.....	2 11-inch pivot, Dahlgren; 4 32-pounds, of 57 cwt.	.....	.....	13	198	34	.....	334
6 guns.....	2 11-inch pivot, Dahlgren; 4 32-pounds, of 57 cwt.	.....	.....	13	198	34	.....	334
3 guns.....	1 11-inch pivot, Dahlgren; 2 32-pounds, of 57 cwt.	.....	.....	10	188	31	.....	250
1 second class steamer...	Not yet determined.....	.....	.....	10	188	31	.....	366

United States, 1859.

Station.	Remarks.
Just returned from the coast of Africa.	Built in 1855, and has been employed in laying the telegraph cable; sails fast and steams well, except against a head sea; but is defective as a fighting ship, having too much sheer in her decks for the rapid and convenient working of her guns.
Flag-ship, Mediterranean.....	"A great ship, a fast ship, a certain ship in working."— <i>Captain Engle</i> . Captain Barron, her present commander, writes of her as a "perfect vessel of her class." Built in Philadelphia, 1855.
Flag-ship, Home Squadron	Built at Gosport, 1855. Sails 11k. 6f. under royals, weather topmast and top-gallant steering sails, propeller down.— <i>Captain Montgomery</i> .
Refitting at Boston.....	Built at Gosport, 1855. "Sails well, when in trim, under all circumstances—say 10k. 6f. on a bowline; have never known her to go 12 knots; steers well, rolls easy; is very stiff under canvas; not as fast a ship as the <i>Wabash</i> ."— <i>Captain Gardner's</i> report.
Flag-ship, Pacific	Built at Charlestown, 1855. "Sails remarkably well, 10½ close-hauled in a top-gallant breeze; carries weather helm, stays well, wears slowly; not very fast before the wind; does not roll remarkably, and is very easy on her masts and rigging; not remarkably fast under steam."— <i>Captain Pendergraft</i> .
On her return from China.....	Built at Washington, 1855. "Sails remarkably fast. In stormy breezes, 16 knots under canvas alone; has gone 17; under royals, 13 knots. In smooth water has steamed 9 knots; her general rate being 8, making 42 revolutions. Head winds have comparatively little effect; but with much of a head sea, LIKE ALL PROPELLERS, she falls off from these rates."— <i>Captain Dupont</i> .
.....	Built originally at Philadelphia; rebuilding at Kittery.
.....	Built originally at Hoboken, 1849.
.....	Building, New York, 1858.
.....	Building, Philadelphia, 1858.
.....	Building, Boston, 1858.
.....	Building, Pensacola, 1858.
.....	Building, Norfolk, 1858.
.....	Built at Brooklyn, 1850. "Sailing fair in a stiff breeze, propeller a heavy drag; carries a strong weather helm, without the spanker; stays and wears slowly; hangs in trough of the sea; required steam in a gale to help her out of the trough of the sea; dull in moderate weather; rolls deeply; is not a stiff ship; lurches violently, with the sea aft or quartering."— <i>Captain H. H. Bell's</i> report.
.....	Building at Portsmouth, N. H., 1859.
.....	Building at Boston, 1859.
.....	Building at New York, 1859.
.....	Building at Philadelphia, 1859.
.....	Building at Norfolk, 1859.
.....	Building at Pensacola, 1859.
.....	Building at Philadelphia, 1859.

CONSTRUCTION OF NAVAL VESSELS.

SUMMARY.

	In commission for active service.	In ordinary.	Building.	Ordered to be built.	Total.
SCREW STEAM FRIGATES.					
1st class	6	.....	2	.....	8
2d class	1	.....	5	.....	6
Total.....	7	.....	7	.....	14
SCREW SLOOPS-OF-WAR.					
2d class .....	.....	.....	7	.....	7

N. B. The English first class or heavy ordnance screw frigates were built to compete with the first class screw frigates of the United States.

A report has been copied in the English prints that the "Minnesota" was found to draw so much water that she could not approach the land near enough to overawe the Celestials. Captain Dupont writes that she can enter all the ports visited by the Mississippi or Powhatan. Fouchow and Ningpo can only be approached by vessels of the class of the Portsmouth and Germantown. Neither the Calcutta (English) nor the French screw frigate Audacieuse ventured into the Tangse Klang until the Minnesota had shown the example. The greatest difficulty experienced by the latter was occasioned by her length, and not her draught of water. In the short turns and currents this impediment required particular vigilance.

IN THE SENATE OF THE UNITED STATES.

JANUARY 31, 1859.—Ordered to be printed.

Mr. WILSON made the following

REPORT.

[To accompany Bill S. No. 545.]

The Committee on Military Affairs and the Militia, to whom was referred the memorial of F. W. Lander, having had the same under consideration, report :

The following is his memorial and the report of the War Department thereupon:

To the honorable the Senate and House of Representatives in Congress assembled:

Your memorialist respectfully represents that he conducted, at his own expense, an exploration of a railroad route from Puget Sound to Mississippi river. A report of this exploration was called for by a resolution of the House of Representatives of August 3, 1854, and was transmitted in answer to an application of the Secretary of War, November 23, 1854.

On the 14th of February, 1855, the House of Representatives passed a resolution directing the printing of ten thousand copies of the report of F. W. Lander, with illustrative plates and maps, and at the request of the chairman of the Committee on Public Printing, your memorialist furnished a costly map, and revised and added to the report.

The only compensation ever received by your memorialist is embraced in the following section of the civil and diplomatic bill, approved March 3, 1855, and covers so much of this work as was endorsed by the legislative assembly of Washington Territory, and of that portion of the route between Puget Sound and Salt Lake, viz:

“For compensation to F. W. Lander, civil engineer, for furnishing report of his reconnaissance for a railroad route from Washington and Oregon Territories, by the way of Fort Hall, to Salt Lake, five thousand dollars.”

As the whole of this work was ordered by Congress, and is now completed, your memorialist respectfully requests that he may be

paid for that portion of the route examined which lies between Salt Lake and Mississippi river, and for the additional expense incurred and service rendered by him at the request of the chairman of the Committee on Public Printing.

But he makes no application for compensation while awaiting the publication of this report, or while rewriting it to meet the approbation of the War Department. Referring to the schedule of legislative and executive action, and to the 31st page of the report transmitted for explanation, your memorialist has the honor to be,

Very respectfully, your obedient servant,

F. W. LANDER.

WASHINGTON CITY.

WAR DEPARTMENT,

Office of Explorations and Surveys, Washington Feb. 16, 1858.

SIR: I have received your directions to report upon the letter of the Hon. J. A. Quitman, chairman of the military committee of the House of Representatives, of the 12th instant. The petition of Mr. Lander was not contained in the letter, and I am, therefore, unable to report upon it specifically. The following statement is based upon the report of Mr. Lander, information received from him, and facts within my personal knowledge as the officer in charge of this office.

The reconnaissance from Puget's Sound to the Mississippi, and the preparation of the first report upon it occupied Mr. Lander from the 1st of February to the end of November, 1854. Subsequently he rewrote and extended his report, which probably occupied him four months.

The expense incurred by him in making the reconnaissance has been reimbursed by an appropriation of \$5,000, but no compensation has been received by him for his services during that time.

The expense attendant upon the preparation of his report has not been reimbursed, nor has he been paid for preparing it.

The value of his report in a pecuniary sense, should be ascertained as follows: The expenditures made by him for the reconnaissances having been reimbursed there remain—

First. A salary for his own services during the time he was employed in the field and office. This I have stated at fourteen months. The compensation should be \$300 per month	\$4,200
Second. The amount paid by him for preparing a map to accompany his report should be refunded to him	300
Third. The expense of copying his reports should be allowed. (This item I have not included in my estimate for his pay.)	150
Fourth. His actual travelling expenses from the point where his party was disbanded to Washington should be refunded	100
Total	<u>4,750</u>

This sum I think Mr. Lander fairly entitled to. I have esti-

mated his pay at a less rate than he would probably receive from private companies for ordinary engineering services. Had he been employed by such parties to make the reconnaissance from Puget's Sound he would probably have received double the amount I have estimated for his pay.

The report of Mr. Lander contains the opinions of an experienced railroad engineer upon the practicability of a railroad route from Puget's Sound to the Mississippi river, based upon his personal examinations. It also contains views upon the mode of constructing a railroad to the Pacific, flowing from a long experience in railroad construction. Its pecuniary value should not, therefore, be estimated at a less sum than that in my statement, in which the salary allowed the engineer is moderate.

The letter of the Hon. J. A. Quitman is returned herewith.

Very respectfully, your obedient servant,

A. A. HUMPHREYS,

Captain Topographical Engineers, in charge.

Hon. J. B. FLOYD,

Secretary of State.

It will be seen that Mr. Lander was paid \$5,000 for expenses incurred by him in making a reconnaissance "from Washington and Oregon Territories to Salt Lake," but was not compensated for his own services in surveying that route, nor for the route for a railroad from Salt Lake to the Mississippi river, although his report of the latter route was adopted and printed by the government, and is to be found in the 3d part of vol. 2 of the reports of the railroad surveys, Ex. Doc. 78, 33d Congress, 2d session.

In view of all the facts in this case, the committee report a bill for F. W. Lander's relief, referring the claim to the War Department to be adjudicated and settled.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 2, 1859.—Ordered to be printed.

Mr. THOMSON, of New Jersey, submitted the following

REPORT.

The Committee on Naval Affairs, to whom was referred the memorial of McKean Buchanan, a purser in the navy, praying indemnity for losses occasioned by the illegal orders of his commanding officer, report.

That in the year 1839 McKean Buchanan was attached as purser to the frigate Constitution, the flag-ship of Commodore Claxton, on the Pacific; that he had laid in on his own account, before the sailing of the ship from the United States, as was customary at that time, a quantity of private stores to be sold by him to the officers and men, upon which he charged an advance of 25 per cent. on the cost of articles of secondary importance, and an advance of 50 per cent. on articles of luxury, which rates of advance or profit were regulated by the laws and usages of the Navy Department, and were intended for his own personal benefit and advantage.

The memorialist further shows that he sold some of these stores for a portion of the time, but subsequently the commodore arbitrarily prohibited any further sales at the same rates, which compelled him to dispose of his goods at reduced rates, or return them at great loss from deterioration. And further, the memorialist regarding the aforesaid order or prohibition illegal, holds the United States responsible for this act of a superior officer in command, and sets up a claim against the government for losses on commissions and depreciation of articles not sold of \$9,360 31.

The first question and the most material, if not the only one entertained by your committee, was whether the government was or ought to be held responsible to subordinate officers for the acts of their superiors. And on this question they have entirely united in opinion that they were not responsible, and that the admission or recognition of such a liability would lead to the most injurious consequences to the service and to the government.

If the order of Commodore Claxton was a legal one, (and it has not been shown it was not so deemed by the head of the Navy Department at the time,) there could be no cause of action against any one. If, on the other hand, the order was an illegal one, and Purser Buchanan could show that he had suffered by its execution, then his remedy was against the commodore for damages, and against him

alone. And the government or Congress of the United States could never interpose to protect an officer from his just responsibility for an illegal order, except in very extreme cases, in time of war, or when the public welfare clearly rendered necessary the exercise of a doubtful or arbitrary power.

The amount of damages sustained by Purser Buchanan, as set forth in the papers accompanying the memorial, was \$9,360 31. The amount assessed by a jury in the city of Philadelphia, was \$5,227 46. But the Fourth Auditor of the treasury did not suppose it to be more than from \$1,000 to \$2,000. But the committee have not thought it necessary to go into an examination on the details of the claim, since in their judgment the amount is entirely immaterial. Their report is made upon the ground of the government not being responsible, except in certain cases, for the illegal acts of a commanding officer. The committee do therefore recommend that the prayer of the petitioner be not granted, and that they be discharged from the further consideration of the memorial, and that this report be printed.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 3, 1859.—Ordered to be printed.

Mr. ALLEN submitted the following

REPORT.

The Committee on Naval Affairs, to whom was referred the petition of Edward Brinley, a lieutenant in the navy, have had the same under consideration, and report:

The petitioner prays that he may be allowed the difference of pay between that of the grade of passed midshipman and lieutenant during the time he discharged the duty of lieutenant, under an acting appointment from the commander-in-chief of the East India squadron.

These claims have, during the present Congress, been fully considered, and by your committee reported upon adversely.—(See reports Nos. 141 and 142, 1st session, 35th Congress.)

The act of August 3, 1848, sec. 6, provides: "That when any master in the navy, or passed midshipman holding an acting appointment as master from the Secretary of the Navy, has performed, or shall hereafter perform, the duty of a lieutenant, under an order of the commander of the vessel to which he was or shall be at the time attached, to supply a deficiency in the established complement of lieutenants of said vessels, whether belonging to a squadron or on separate service, which order shall have been approved by the Secretary of the Navy, [he] shall be allowed the pay of master for the period or periods during which he shall have performed such duty."

There are other provisions of law which equally forbid the prayer of the petitioner. In the army appropriation act of 23d August, 1842, it is provided that—

"No officer of any branch of the public service shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or any other service or duty whatsoever, unless the same shall be authorized by law, and the appropriation therefor explicitly set forth that it is for such additional pay, extra allowance, or compensation."

The 12th section of the act of 26th August, 1842, is in these words:

"No allowance or compensation shall be made to any clerk or other officer, by reason of the discharge of duties which belong to any other clerk or officer, in the same or any other department, and no allowance shall be made for any extra services whatever, which any clerk or other officer may be required to perform."

The 3d section of the act of 3d March, 1839, is in these words:

“No officer in any branch of the public service, or any other person, whose salaries, or whose pay, or emoluments is or are fixed by law and regulations, shall receive any extra allowance or compensation, in any form whatever, for the disbursement of public money, or the performance of any service, unless the said extra allowance or compensation be authorized by law.”—(Statutes at Large, vol. V., p. 349.)

The appointment of this officer as acting lieutenant does not appear to have been approved by the Secretary of the Navy, nor was he passed through the grade of master, and consequently, under the above recited provision of the act of 1848, would not be entitled to any pay in addition to that received by him.

Your committee recommend that the prayer of the petitioner be rejected, and ask to be discharged from the further consideration of the subject.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 3, 1859.—Ordered to be printed.

Mr. CLARK made the following

REPORT.

[To accompany Bill S. 353.]

The Committee on Claims, to whom was referred the memorial of Thomas Crown, praying for relief, in consequence of the arbitrary abrogation of a contract made by him with the United States to furnish bricks for the fortifications at Oak Island, in North Carolina, in 1826, make the following report:

That upon an examination of this case the committee find the following facts:

In January, 1826, Captain George Blaney, of the Engineer Corps of the United States army, who was then superintending the fortifications at Oak Island, near the mouth of Cape Fear river, issued proposals for the delivery at Oak Island of six millions of bricks. The petitioner filed his proposals for the furnishing and delivering from one million to six millions of bricks, at the rate of seven dollars and seventy-five cents per thousand. Said proposals, being less than those of any other person, were accepted by said Blaney, in March, 1826, and were duly certified to the Engineer department at Washington, according to the regulations then existing. On the 16th day of March a contract, under seal, was made between the petitioner and Captain Blaney, acting for and on behalf of the United States, pursuant, in all respects, to the advertisement and proposals, wherein the petitioner covenanted to deliver at Oak Island three million bricks, to wit: one million on or before the first day of October, 1826; one million on or before the thirtieth day of November, 1826; and the remainder on or before the thirty-first day of December, 1826.

The petitioner proceeded to Smithville, near Oak Island, having made all the preparations necessary to enable him to carry on his contract, and by the 1st of July, 1826, had made about 800,000 brick.

In June Captain Blaney received 5,000 bricks and paid for them.

In July, 1826, the contract was forwarded by Captain Blaney to the Engineer department, and on the 20th of the same month it was returned with the objections from the department, that there was no penalty expressed, and no bond accompanying it.

There was no agreement between the petitioner and Blaney that the contract might be altered, modified, or rescinded by either party, or that its approval by any superior officer was necessary.

After receiving the communication from the Engineer department, Blaney refused to fulfil the contract. He alleged that the petitioner had not the means to fulfil it, and was in debt to one Potter; but he owed Potter only about six hundred dollars, and if Blaney had paid him for his bricks, according to the contract, he would have been relieved from this indebtedness.

Blaney utterly refused to comply with the stipulations of the contract on the part of the United States, and insisted upon the petitioner's transferring his property to Potter, which, by the arbitrary and unjustifiable conduct of the officer of the United States, he was compelled to do.

Blaney having thus rescinded the contract, then accepted from Potter the bricks made by the petitioner, for which he paid him from eight dollars to eight dollars and fifty cents per thousand!

The petitioner in this case sought relief in the Court of Claims; and a full hearing was had in that tribunal, and the facts above recited were established. The court gave an opinion in the case, concluding in the following language:

"Our opinion is, that the contract was a valid one. We think also that the evidence shows no good reason for rescinding it; that Blaney refused absolutely to receive any bricks of Crown, and that Crown then had on hand 500,000 bricks, for which he should have been paid \$3,500 under his contract; for which sum we report a bill."

The bill thus reported passed both houses of Congress, and Crown received the money.

This sum was what was actually due to Crown at the time he was ready to deliver the bricks to the United States, in conformity with his contract, (not later than October 1, 1826,) and which was detained in the treasury of the United States by the arbitrary rescinding of Crown's contract.

When your committee consider that this money has been justly due and payable to the petitioner from the time that Blaney improperly refused to fulfil the contract, and that no part of it was ever paid till the passage of the act above mentioned, on the 3d of March, 1857, although the petitioner has repeatedly sought it for the long period of thirty years, they see no reason why government, having broken the contract, and determined the amount which was justly due, should not pay interest thereon.

They are therefore of opinion that interest, at six per cent. per annum, should be paid to Mr. Crown on the said sum of \$3,500 from October 1, 1826, to the 3d day of March, 1857, amounting to \$6,389 25.

Your committee now proceed to consider the question as to the allowance to the petitioner of damages in consequence of the breach of his contract by the government.

Where a contract is made between two individuals, and the conditions of it are broken by one of the contractors, there is no doubt that he is liable for the breach. The question is, whether there should

be any distinction between the government and an individual; for numerous instances can be cited where an individual contracting with the government, and not fulfilling his contract, has been subjected to damages; and why should not the government be equally liable? Your committee are of opinion that they are.

It is in evidence that the petitioner entered into a contract with the government, in good faith, through its authorized agent, to deliver for the use of the government three millions of brick, and was at considerable expense in arranging the preliminaries for the fulfilment of his contract. Mr. Crown made 800,000 bricks, 500,000 of them were received by the officer, and have been paid for; 300,000 were pronounced unsatisfactory, and rejected, leaving 2,200,000 still to be made by Crown when his contract was abrogated.

For reasons not apparent to your committee, the petitioner was thus compelled to retire from his enterprise, and surrender the fair probability of realizing a handsome profit on his contract.

Laying aside the years of delay in the receipt of the *pro rata* compensation for 500,000 bricks, it is by no means clear that such *pro rata* is adequate to reimburse the outlays and preparation for the fulfilment of so extensive an undertaking. Be this as it may, the contract was rescinded by the government without legal right, and the petitioner may legally claim the profits he might have made in that portion of the contract which he was prevented from fulfilling.

It is in evidence that bricks of the character of those furnished at Oak Island were worth, in Alexandria, in the fall of 1820, five dollars per 1,000. Allowing for the remoteness of the place an increase of one dollar per thousand over the price in Alexandria, and making the allowance of seventy-five cents per one thousand for the delivery at Oak Island, leaves a net profit of one dollar on every thousand contracted for.

Mr. Crown is, therefore, in the opinion of your committee, justly entitled to one dollar damages on each thousand of the 2,200,000 bricks which he was entitled to furnish under his contract at the time of its abrogation, amounting to two thousand two hundred dollars. Your committee, therefore, find due Mr. Crown, as interest, \$6,389 25, and as damages, \$2,200, amounting to \$8,589 25; for which sum they report a bill for his relief.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 3, 1859.—Ordered to lie on the table and be printed.

Mr. BAYARD submitted the following

REPORT.

The Committee on the Judiciary, to whom was referred the memorial of the State of Indiana, by her representatives and senators in general convention assembled, representing that it is her wish and desire that the honorable Henry S. Lane and the honorable William Monroe McCarty be admitted to seats in the Senate of the United States, as the only legally elected and constitutionally chosen senators of that State, submit the following report:

That the honorable Graham N. Fitch, on the 9th day of February, 1857, was admitted by the Senate, on the customary *prima facie* evidence of his election, as a senator from the State of Indiana, to serve as such until the 4th day of March, A. D. 1861; was qualified, and took his seat as a senator. On the same day resolutions of the senate of Indiana adverse to the legality of his election, and a protest of certain members of the house of representatives of the same State against the validity of the election, were presented to the Senate; and the credentials of Mr. Fitch, the resolutions of the senate of Indiana, and the protest of the members of the house of representatives against the validity of the election were referred to the Committee on the Judiciary.

The committee, on the 26th of February, reported a resolution authorizing testimony to be taken, both by the sitting members and the protestants, in relation to all matters of fact contained in their respective allegations. This report was ordered to lie upon the table on the 2d of March, 1857; and no further action was had upon the subject during that session. At the called session of the Senate, the papers on file relating to the election of Mr. Fitch were, on the 9th of March, 1857, on motion of Mr. Trumbull, referred to the Committee on the Judiciary; and on the 14th of March the committee reported a resolution authorizing testimony to be taken—slightly variant from the resolution reported at the preceding session. The resolution was on the same day ordered to lie on the table. The credentials of the honorable Jesse D. Bright, elected a senator from the State of Indiana,

to serve as such until the 4th day of March, 1863, were presented to the Senate and read on the 2d day of March, 1857; and at the called session of the Senate, on the 4th day of March, A. D. 1857, Mr. Bright was qualified and took his seat. At the first session of the present Congress, on the 17th of December, 1858, on motion of Mr. Trumbull, the credentials of the sitting members from Indiana, together with all papers on file protesting against their right to seats, or relating to their election as senators in Congress by the legislature of Indiana, were referred by the Senate to the Committee on the Judiciary. On the 21st of January, 1858, the committee made a report, concluding with a resolution similar to the resolution which had previously been reported in relation to the case of Mr. Fitch, authorizing testimony to be taken; and on the 25th of the same month Mr. Trumbull submitted the views of the minority of the committee.

Both the report of the committee and the views of the minority were printed and are appended as part of this report, with a view to the illustration of the questions presented to the Senate, upon which its decision was subsequently made.

On the 16th of February, 1858, the consideration of the resolution reported by the committee was resumed, and after the rejection of some proposed amendments, and the adoption of others, the following resolution was passed by the Senate:

“Resolved, That in the case of the contested election of the honorable Graham N. Fitch and the honorable Jesse D. Bright, senators returned and admitted to their seats from the State of Indiana, the sitting members and all persons protesting against their election, or any of them, by themselves or their agents or attorneys, be permitted to take testimony on the allegations of the protestants and the sitting members, touching all matters of fact therein contained, before any judge of the District Court of the United States, or any judge of the supreme or circuit courts of the State of Indiana, by first giving ten days' notice of the time and place of such proceeding in some public gazette printed at Indianapolis: *Provided*, That the proofs to be taken shall be returned to the Senate of the United States within ninety days from the passage of this resolution. *And provided*, That no testimony shall be taken under this resolution in relation to the qualification, election, or return of any member of the Indiana legislature.”

Testimony was subsequently taken by the protestants, which was, together with certain affidavits presented on behalf of the sitting members, and documentary evidence referred to the Committee on the Judiciary, and on the 24th of May, 1858, Mr. Pugh from that committee reported the following resolution:

“Resolved, That Graham N. Fitch and Jesse D. Bright, senators returned and admitted from the State of Indiana, are entitled to the seats which they now hold in the Senate, as such senators aforesaid, the former until the 4th of March, 1861, and the latter until the 4th of March, 1863, according to the tenor of their respective credentials.”

This resolution and the accompanying documents were on the same day ordered to be printed.

The resolution was under consideration in the Senate, and fully debated at several subsequent times, and was finally, after the rejection of several proposed amendments, passed by the Senate without amendment or alteration. In the opinion of the committee, this resolution (no motion having been made to reconsider it) finally disposed of all questions presented to the Senate, involving the respective rights of the Hon. Graham N. Fitch and the Hon. Jesse D. Bright to their seats in the Senate, as senators from the State of Indiana for the terms stated in the resolution. It appears by the memorial that the legislature of Indiana, at its recent session in December last, assumed the power of revising the final decision thus made by the Senate of the United States, under its unquestioned and undoubted constitutional authority, to "be the judge of the qualifications of its own members." Under this assumption, it also appears by the journals of the senate and house of representatives of the State of Indiana, the legislature of Indiana, treating the seats of the senators from that State as vacant, proceeded, subsequently, by a concurrent vote of the senate and house of representatives of the State, to elect the Hon. Henry S. Lane as a senator of the United States for the State of Indiana, to serve as such until the 4th of March, 1863, and the Hon. William Monroe M'Carty as a senator for the same State, to serve as such until the 4th of March, A. D. 1861. Under this action of the legislature of Indiana those gentlemen now claim their seats in the Senate of the United States.

It may be conceded that the election would have been valid, and the claimants entitled to their seats, had the legislature of Indiana possessed the authority to revise the decision of the Senate of the United States, that Messrs Fitch and Bright had been duly elected senators from Indiana, the former until the 4th of March, 1861, and the latter until the 4th of March, 1863.

In the opinion of the committee, however, no such authority existed in the legislature of Indiana. There was no vacancy in the representation of that State in the Senate; and the decision of the Senate, made on the 12th of June, 1858, established finally, and (in the absence of a motion to reconsider) irreversibly the right of the Hon. Graham N. Fitch as a senator of the State of Indiana until the 4th of March, 1861, and the right of the Hon. Jesse D. Bright as a senator from the same State until the 4th of March, A. D. 1863.

The decision was made by an authority having exclusive jurisdiction of the subject; was judicial in its nature; and, being made on a contest in which all the facts and questions of law involving the validity of the election of Messrs. Fitch and Bright, and their respective rights to their seats, were as fully known and presented to the Senate as they are now in the memorial of the legislature of Indiana, the judgment of the Senate then rendered is final, and precludes further inquiry into the subject to which it relates.

There being, by the decision of the Senate, no vacancy from the State of Indiana, in the Senate of the United States, the election

held by the legislature of that State at its recent session is, in the opinion of the committee, a nullity, and merely void, and confers no rights upon the persons it assumed to elect as senators of the United States. The committee ask to be discharged from the further consideration of the memorial of the legislature of Indiana.

IN THE SENATE OF THE UNITED STATES, *January 21, 1858.*

Mr. BAYARD made the following report.

The Committee on the Judiciary, to whom was referred the protest against the election of the Hon. Graham N. Fitch and the Hon. Jesse D. Bright, as senators in Congress from the State of Indiana, report:

The committee find that the protests against the election of the Hon. Graham N. Fitch as a senator in Congress from the State of Indiana were referred to the Committee on the Judiciary on the 10th of February, 1857, and on the 26th of the same month a resolution was reported by the committee authorizing testimony to be taken both by the protestants and sitting member. The resolution not being acted upon by the Senate at that session, from the pressure of other business, the protests were again referred to the committee on the 9th of March last, at the special session of the Senate, and the same resolution, with a slight amendment, reported by the committee on the 13th of the same month, which being taken up on the day it was reported, a debate ensued upon an amendment offered by the Hon. Mr. Trumbull, of Illinois, and the Senate having on the previous day resolved to adjourn "*sine die*" on the 14th of March, at 1 o'clock, the resolution reported by the committee was ordered to lie on the table.

The protests against the election of the Hon. Jesse D. Bright, as well as against the election of the Hon. Graham N. Fitch, having been referred at the present session, and the objections of the protestants and allegations of the sitting members being identical in both cases, the committee have adopted and recommend the passage of the resolution reported to the Senate by the committee at the special session on the 13th day of March last, with such variation as is requisite to make it apply to the cases of both the sitting members, as follows:

Resolved, That in the case of the contested election of the Hon. Graham N. Fitch and the Hon. Jesse D. Bright, senators returned and admitted to their seats from the State of Indiana, the sitting members, and all persons protesting against their election, or any of them, by themselves, or their agents or attorneys, be permitted to take testimony on the allegations of the protestants and the sitting members touching all matters of fact therein contained, before any judge of the district court of the United States, or any judge of the

supreme or circuit courts of the State of Indiana, by first giving ten days' notice of the time and place of such proceeding in some public gazette printed at Indianapolis.

IN THE SENATE OF THE UNITED STATES, *January 25, 1858.*

Mr. TRUMBULL submitted the following views of the minority of

The Committee on the Judiciary, to whom were referred the protests against the right of Graham N. Fitch and Jesse D. Bright to seats as senators from the State of Indiana.

The legislature of Indiana, called the general assembly, is composed of a senate of fifty members, and a house of representatives of one hundred members, and two-thirds of each house is, by the constitution, required to constitute a quorum thereof. Each house is declared to be judge of the election and qualification of its members, and required to keep a journal of its proceedings. No regulation exists by law in Indiana as to the manner in which members of the State senate are to be inducted into office. No law or regulation is there existing providing the time, place, or manner of electing United States senators.

It appears by the journal of the senate of Indiana, that on the opening of the senate at the meeting of the legislature January 8, 1857, forty-nine of the senators were present, and that all the newly elected members were duly sworn, took their seats, and continued thereafter to act with the other senators till the close of the session. The only absentee senator took his seat January 13, 1857. Protests were filed contesting the seats of three of the newly elected members, which were afterwards examined and considered by the senate, and they were each found and declared to be entitled to seats, respectively, by majorities more or less numerous, all which is entered upon and appears by the journal of said senate.

The State constitution makes it the duty of the speaker of the house of representatives to open and publish the votes for governor and lieutenant governor in the presence of both houses of the general assembly. No provision exists by the constitution making such meeting or presence of the two houses a convention, or providing any officers therefor, or authorizing or empowering the same to transact any business whatever, except by joint vote forthwith to proceed to elect a governor or lieutenant governor in case of a tie vote.

Both houses being in session, the speaker notified them that he should proceed to open and publish the votes for governor and lieutenant governor, on Monday the 12th day of January, at 2½ o'clock p. m., in the hall of the house. Shortly before the hour arrived the president of the senate announced that he would proceed immediately to the hall of the house of representatives; and thereupon, together with such senators as chose to go, being a minority of the whole number thereof, he repaired to the hall of the house of representatives, and there, in their presence, and in the presence of the members of

the house, the votes for governor and lieutenant governor were duly counted and published by the speaker, and A. P. Willard, the then president of the senate, was declared duly elected governor, and A. A. Hammon lieutenant governor, of said State.

At the close of this business, a senator present, without any vote for that purpose, declared the meeting (by him then called a convention) adjourned to the 2d day of February, 1857, at two o'clock.

The senate hearing of this proceeding, on the 29th day of January, 1857, as appears by its journal, passed a resolution protesting against the proceedings of said so-called convention, disclaiming all connexion therewith or recognizance thereof, and protesting against any election of United States senators or any other officer thereby. On the 2d of February, 1857, the president of the senate, with a minority of its members, again attended in the hall of the house, and without proceeding to any business, and without any vote, declared the meeting (by him called a convention) adjourned until the 4th day of February, 1857, at which time the president of the senate, with twenty-four of its members, went to the hall of the house of representatives, and there they, together with sixty-two members of the house, proceeded to elect two senators of the United States, to wit: Graham N. Fitch and Jesse D. Bright, they each receiving eighty-three votes, and no more, at their respective elections, twenty-three of which votes were by members of the senate.

Against these elections so made, protests by twenty-seven members of the senate of Indiana and thirty-five members of the house of representatives of said State have been duly presented, alleging that, in the absence of any law, joint resolution, or regulation of any kind by the two houses composing the legislature of Indiana providing for holding a joint convention, it is not competent for a minority of the members of the senate, and a majority but less than a quorum of the members of the house of representatives of said State, to assemble together and make an election of United States senators.

Of the facts as herein stated there is no dispute, as we understand.

It is now alleged by the sitting senators, respectively, as we understand the substance of their allegations, in contradiction of the Senate Journal, that the three State senators whose seats were contested were not legally elected and qualified; that they were without the expressly required credentials, the certificate of the proper and only returning officer, and that they were, notwithstanding, directed to be sworn in by a presiding officer chosen for the purpose by the members of the senate designated as republicans, for the clear purpose, illegal and fraudulent in fact, of defeating an election of senators of the United States.

Under these circumstances, we object to the adoption of the resolution for the taking of testimony to sustain these allegations, because the said election of United States senators, so conducted, is obviously illegal and insufficient, and cannot be cured by any proof of these allegations; and we insist that the Senate should now proceed to a definitive decision of the question.

J. COLLAMER,
L. TRUMBULL.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 3, 1859.

Mr. COLLAMER submitted the following

VIEWS OF THE MINORITY.

The power of the Senate to judge of the election and qualification of its own members is unlimited and abiding. It is not exhausted in any particular case by once adjudicating the same, as the power of re-examination and the correction of error or mistake, incident to all judicial tribunals and proceedings, remains with the Senate in this respect, as well to do justice to itself as to the States represented, or to the persons claiming or holding seats. Such an abiding power must exist, to purge the body from intruders, otherwise any one might retain his seat who had once wrongly procured a decision of the Senate in his favor by fraud and falsehood, or even by papers forged or fabricated.

In what cases and at whose application a rehearing will at all times be granted is not now necessary to inquire; but when new parties, with apparently legal claim, apply, and especially when a sovereign State, by its legislature, makes respectful application to be represented by persons in the Senate legally elected, and insists that the sitting members from that State were never legally chosen, we consider that the subject should be fully re-examined, and that neither the State, the legislature, or the persons now claiming seats, can legally or justly be estopped, or even prejudiced, by any former proceedings of the Senate to which they were not parties.

At the first session of the legislature of Indiana, after the present sitting members were declared by the Senate as entitled to their seats, and at the earliest time it could take action, it declared their pretended election as inoperative and void, and that the State was in fact unrepresented; and they proceeded to elect H. S. Lane and William M. McCarty as senators of the United States for said State, according to the Constitution of the United States; and they send here their memorial, alleging that the present sitting members were never legally elected; and they show facts, in addition to what was heretofore presented to the Senate, tending, as they consider, to sustain this

allegation. The said Lane and McCarty present their certificates and claim their seats. We consider the matters stated in said memorial as true. The said Lane and McCarty have presented their brief sustaining their claim to seats, which is in the words following:

Brief of W. M. McCarty and Henry S. Lane, submitted to the Judiciary Committee of the Senate.

The State is entitled to the office. The legislature is her supreme instrument and donee of the power to elect senators. It is the creature of the constitution, which is the chart of its power, vested only in two co-ordinate branches; a quorum of two-thirds of the members is requisite to give either a legal entity; each is equivalent in power, with an absolute veto on the power of the other.

The legislature is a corporation aggregate, with only such power as its creator has seen fit to endow it with, to be exercised in conformity to the laws of its birth.

To the joint wisdom and counsel of these colleges is the legislative power entrusted. It is not parceled out to its component elements in integrals, neither is it vested in an amalgamated body of the two. The one is erected as a barrier to the other. The ordeal of both must be passed. This guaranty against abuse cannot be broken down without destroying one of the safeguards of our government. The sovereign voice is an unit. The power that utters it is an entirety—an invisible, intangible, artificial person. The power is in the organism called “the general assembly,” and not in the individual members. It is not the rights or powers of the members, but the delegated trust powers of the State that are wielded in senatorial elections or other exercises of legislative powers. Without a quorum of either house it did not exist—without either, the legislature did not exist, and without a legislature, no election would be had.

Now, the facts are that a quorum of neither house was present at the pretended election of Messrs. Bright and Fitch, nor even a majority of the senate, nor did either house prescribe the time, place, or manner of electing.

It is of the essence of legislative power that its exercise shall be free from all restraint; each body free to deliberate and act in its duties; each entitled to its full powers. The facts are that *the senate, upon eight occasions, refused to go into joint convention with the house, and at no time consented.* She could not be *compelled* to merge her individuality, or surrender her veto power, or adopt the joint vote mode of electing senators; or, in other words, dilute or annihilate her power, upon the mandate of the house, as that would degrade her from an equal to an inferior. On the contrary she had the right to determine the time, place and manner, and did do it by resolution, to elect by *separate* vote, at a proper time, in which the house never concurred. Where diverse duties are imposed, she must determine which are most imperative, and shall have priority.

The constitution of Indiana only provides for a joint convention upon the contingency of a tie vote for governor and lieutenant-gov-

error. That contingency did not exist; therefore the convention did not. To say that a duty to form a joint convention creates it, is as absurd as to say that the subpoena of a witness works his presence, or the commands of the decalogue their observance.

Failing to get the senate into a joint convention, a false record of that pretended fact was made, to be used as evidence, and which has been used as veritable and true, and the absolute verity and the unimpeachable quality of a record claimed for the fabrication.

The resolves of the senate are those of the whole body. The mutinous senators, who usurped the name and power of the senate in said pretended convention, were subject to arrest by order of that body for absence, and the attempt to nullify the will of the majority by attempting a business at a time, place, and in a manner vetoed by that body, by a resolve, then unvacated and unrescinded. Said convention, if it existed, expired with the duty that called it into life. The president of the senate, when inaugurated governor, his office as president of the senate expired, and with it that of his deputy president. The president not only usurped the power to appoint a clerk—an office not known to the law and void—who only authenticated this pretended election by interpolating it into the journal of the house. This president, whose power expired with that of his creator, arrogated that of adjourning it to a fixed day; in other words, commanding it to obey his arbitrary rescript; and, at a subsequent one, the more imperious mandate commanded them to proceed to elect senators, no agreement whatever having been had by the house therefor as to time, place, and manner.

We aver that not only did no usage exist in Indiana, but that in no solitary instance was an election had without the consent of both houses, fixing time, place, &c., by law or resolution. While said pretended convention was in existence, but adjourned to a fixed day, numerous attempts were made in both houses to create one by the members who voted for Messrs. Bright and Fitch; thus offering evidence that they did not consider that one *had* been formed and was in existence. No forced convention could be had. Mutual consent was necessary, and it was never had by a vote, which is the only mode of altering the will of a legislative body.

The history of joint conventions in Indiana will also show that no other business was ever transacted than that for which it was specially convened. And we insist that the validity of the acts of a joint convention is due to the separate action of the two houses as the general assembly. It is also necessary to the validity of all elections by corporate bodies that notice be given of the time, &c., and the journals of neither house show any such notice or any conventional agreement for the same.

Upon the facts and law above no legal election could have been had.

To sustain the title of Messrs. Bright and Fitch, the constitution of Indiana, depositing her legislative power in two co-ordinate houses, must be broken down—that which requires two-thirds of the members to exercise any of her attributes of sovereignty, and that one house cannot coerce the other. Not only is this election in defiance

of these injunctions, but in the face of a positive dissent by one branch, armed by the people with an absolute veto. But a presiding officer, who is no part of the legislature, usurped the powers and prerogatives of the legislature; all the forms and guaranties with which the people hedged in their legislative servant were disregarded, and it is claimed that the act is as valid as if they had been observed.

To sustain Messrs. Bright and Fitch the constitution of Indiana is made a dead letter. Will the Senate, the peculiar guardians of State rights, reared up for that especial purpose, exclude Indiana from her weight and voice in it by instruments empowered by her? Will she be allowed to interpret her own constitution and acts, or will the Senate, under any pretence, blot her out of the confederacy, and realize all of those fears portrayed by some of the framers of the Constitution by an absorption of and encroachment upon State rights?

The legislative power enshrines and protects all rights subject to its jurisdiction. Prior to the confederation the several States owed this duty to their citizens. They did not surrender it, but intrusted it to the federal for their better protection with the right guaranteed them of a voice in the Senate, as a means of enforcing this duty through the federal instrument.

We deny that under a constitutional grant of power, with prescribed modes of its exhibition, that you can discriminate between elections and laws. The selection of a general, upon whose skill the fate of an army or the country may depend, or of a judge upon whose legal attainments and integrity the lives, liberties, and property of the citizen may depend, is of less moment than some petty law.

The same power is as requisite to the creation of the one as the other.

But it may be said that this question is *res adjudicata*.

We deny that our rights or title are barred by a decision had *before they were created*.

We deny that the judicial power of the Senate is capable of self-exhaustion. We deny that the political right of the State is capable of annihilation without annihilating the Constitution which creates the right.

We insist that the right to judge of the election and qualification of members must continue while the term continues.

The qualifications are continuing conditions of title.

We deny that courts are ever estopped by their own action.

We deny that sovereigns are estopped.

We deny that Indiana was, prior to this time, a party to the proceedings of the Senate, or had opportunity to allege or elicit the true facts.

We deny the power of the Senate, under the power to judge, to create senators for Indiana.

We claim for her a superior knowledge of her own acts and grants.

We insist that the simple admission of a senator to his seat upon credentials is a decision, and that it was never pretended this precluded his ouster if his title were not good.

If the Senate have not power to exclude foreign elements at all times, it is not equal to the duties intrusted to its guardianship.

And we will not believe that the Senate is the only tribunal [on earth whose wrongs, once done, are eternal and irrevocable.

W. M. McCARTY,
H. S. LANE.

In the case of the State of Mississippi, in the House of Representatives in the 25th Congress, the power to re-examine a decision made on an election of members was fully considered and decided. Gohlston and Claiborne were, at a special election held on the proclamation of the governor, chosen representatives from that State, to a special session of Congress, called by the President. At that session exception was taken to them, but after some objection they were admitted to their seats. Their case and papers were referred to the Committee on Elections, who made report, and thereupon, on full and elaborate discussion, it was resolved that they were duly elected members of the 25th Congress, and entitled to their seats. This was in September. In November following an election was holden in said State and Prentiss and Ward were elected members of the 25th Congress, who, in December following, presented their credentials and claimed their seats. It was then insisted in that case, as it now is in this, that the decision so before made was conclusive of the right of Claiborne and Gohlston to their seats as members of the 25th Congress, and the whole matter was "*res adjudicata*." But on full examination and after full discussion, the former resolution declaring said Claiborne and Gohlston as duly elected members of the 25th Congress was *rescinded*.

We are therefore of opinion that the memorial of the legislature of Indiana should be duly entertained and considered, and the said Lane and McCarty fully heard; and that if on full examination and hearing the Senate find that the present sitting members were not duly elected, the resolution declaring them elected should be reconsidered. And if the Senate find that the said Lane and McCarty were legally elected they should be admitted to their seats.

J. COLLAMER,
L. TRUMBULL,

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 4, 1859.—Ordered to be printed.



Mr. BRIGHT made the following

REPORT.

[To accompany Bill S. 558.]

The Committee on the Public Buildings and Grounds, to whom have been referred "A bill to authorize the city of Washington to distribute and use the water soon to be introduced therein from the Potomac river," and the "Bill conferring certain powers on the corporations of Washington and Georgetown," have had the same under consideration, and are of the opinion that these bills do not contain appropriate or sufficient provisions to suit the character or condition of the water-works, nor to accomplish the objects necessary to be secured both on the part of the government and the cities of Washington and Georgetown, and therefore report these bills without amendment, and recommend that they be indefinitely postponed.

The committee have come to the conclusion that, before clothing the corporate authorities of Washington and Georgetown with the power of tapping the main conduits and other pipes for the conveyance of the Potomac water into those cities, or, at least, simultaneously with that act of favor on the part of the government, provision should be made by law for the care and preservation of the aqueducts, reservoirs, main conduits, supply pipes, and other fixtures connected with the Potomac water-works, which have been constructed, and remain to be completed, at great cost to the United States. As the government is itself deeply interested in preserving those extensive works without injury, with a view of supplying the public buildings, grounds, the military and naval establishments, and for all other public purposes, the committee are of the opinion that great care should be taken in framing the law upon the subject, so that, while a generous and liberal provision is made for a full supply of the Potomac water to the inhabitants of these two cities, the government may provide the means of securing and perpetuating these advantages, not only to the inhabitants, but for its own purposes and uses at the national seat of government.

To secure these objects the committee have entered into the details

of a system which they consider necessary, and have, with much care, prepared the bill which accompanies this report.

By the first section of this bill the President of the United States is directed to place these water-works, and all the property connected therewith belonging to the United States, under the immediate care, management, and superintendence of a properly qualified officer belonging to the Engineer department, and acting under the orders of the President, through the Department of the Interior. The employment of this one officer alone, of whose qualifications and entire competency there will be no doubt, while it will be the most economical means of taking care of and keeping in order so extensive and costly a work, it will, at the same time, be the most effectual means of doing so.

The second section of the bill provides for and secures the complete and continued supply of the Potomac water for all governmental purposes in the cities of Washington and Georgetown, and the District of Columbia. This object is manifestly of primary importance to the government.

The third section of the bill fully authorizes the corporate authorities of Washington and Georgetown to connect supply pipes with the main conduits and supply pipes laid down by the United States, for the purpose of supplying the inhabitants of those cities with the Potomac water. It requires that such connexion of the supply pipes should be made in the strongest and best manner, and that such pipes, as well as all the fixtures connected therewith, should be of the strongest and best approved material and workmanship. And it requires that those corporate authorities should provide a sufficient number of hydrants for the public supply of the water to the inhabitants, and the means of using the water for the security of property against destruction by fire, as also for other useful and sanitary purposes. This section secures to the people the conveniences and advantages in the uses of the Potomac water which it is intended by the government that they should enjoy.

The fourth section of the bill authorizes the corporate authorities to lay down the supply pipes in all cases where the building lines of avenues and streets are more than one-half the distance occupied by houses, and in other cases where a majority of the owners or proprietors of lots apply for the laying down of the supply pipes.

The fifth section secures to the owners, proprietors, and occupants of houses, the use of the Potomac water in their houses and establishments, upon the payment for the service pipe and work required to introduce the water, and a small rent for the use of the water, and requires that the work be done by a plumber licensed by the corporation.

The sixth section requires that each of the corporate authorities should appoint a competent engineer, well acquainted with hydraulics, who should be charged with the duty of attending to all the work necessary to furnish the water to the cities. It provides that these two engineers, together with the engineer appointed by the President, should form a board of engineers, for the consideration and settlement of all propositions and questions relating to the scientific and

practical execution of all parts of the work, and arrangement of the details and measures necessary for the supply of the inhabitants of those cities with the Potomac water. It is intended that this board should secure the strength and adoption of all materials and articles used in the work, and that such work should be done in the most effectual and workmanlike manner, to secure safety and durability, and to guard against accidents and casualties. The committee deem this formation of a board of engineers as a very important provision of the bill, as it brings together, with scientific and experienced advantages, the interests of the United States and of each of the cities of Washington and Georgetown in this great national work, and will therefore secure its safety and proper management.

The seventh section authorizes the corporations, respectively, to borrow or obtain loans upon the issue of stock, for the purpose of supplying the cities with water without delay. The amount of these loans is not limited specifically, but the terms in which the power is conveyed expressly confines them to such amounts as may be required to furnish, as soon as practicable, such supply of water as may be required by the present wants of the people, to which, it is presumed, none would object.

The eighth section authorizes the corporations to assess certain taxes and water rents, for the purpose of reimbursing the expenditures and paying off the loans; and authorizes the stoppage of the supply of water in houses unless the taxes or rents be paid.

The ninth, tenth, and eleventh sections authorize the appointment by the corporate authorities of a water purveyor, a register, and treasurer, for the management of the various works, affairs, and fiscal concerns connected with these water-works, for the respective cities, and establishes a proper accountability and guaranty for the faithful performance of their duties.

The twelfth section constitutes the mayor, the president of the board of aldermen, and president of the board of common councilmen of each city, a board of management and control of all the affairs connected with the water-works of such city. This board are authorized, with the consent of the board of aldermen, to appoint the officers required to perform all the duties connected with the administration of the affairs of these water-works for the respective cities, and are required to maintain a regular supervision over their acts, and to establish such checks and responsibilities as to insure a faithful and correct execution of their trusts and duties.

The thirteenth section requires a strict account to be kept of the receipts and expenditures on account of the water-works for each city; and when the loans and expenses are paid, the corporate authorities are required to reduce the water taxes and rents, so that the income from that source may be sufficient to cover the repairs, expenses, and compensation of the officers, and to leave an adequate surplus for casualties. This section prohibits the application of any part of the proceeds of the water fund to any other object than such as relate to its uses and management. This section secures the rights and interests of individual inhabitants, and prevents the corporate authorities from speculating upon the funds derived from the water-works and extort-

ing money unjustly from the people for whose especial benefit this supply of water to the cities was intended.

The fourteenth section provides for a complete system of sewerage and drains for these cities, which is consequent to and inseparable from such supply of water, in order to prevent inconvenience and sickness from the surplus water, which would otherwise be a great nuisance and disadvantage to the cities.

The fifteenth section empowers the respective corporations to make such laws and regulations as may be necessary to effect the objects and purposes and to secure the privileges and advantages of this act, as well as for the protection of all the property and fixtures connected with the water-works of each city. It also gives them the power to define and punish, by fine and imprisonment, any person guilty of a misdemeanor under the act.

Thus it will be seen that the committee have endeavored to guard and protect every interest concerned in this subject, which, on reflection, will be found to be one of great magnitude and importance.

The paramount interest which the United States have in these water-works will not admit of the idea of allowing these corporations to assume a jurisdiction over them except so far as they may be authorized to do so by Congress, who, according to the Constitution, have the power of exclusive legislation in all cases whatsoever over the District of Columbia.

The use of the water allowed to the people of these cities is gratuitous, and Congress being the only legislative authority in this District, and having exclusive jurisdiction, have a right to attach conditions to the grant, more especially when those conditions are all intended to protect this great work from injury, and to secure in perpetuity to the inhabitants of the two cities the full conveniences and benefits arising from an abundant supply of the purest and most wholesome water, and at a cost which, in process of time not distant, will become merely nominal, as it will be merely intended to keep the works in repair and to provide against unforeseen casualties.

The provisions of this bill secure to the inhabitants all these advantages, and by particular directions restrict the corporate authorities to the execution of the work in the best and most effectual manner; allows them to collect from those who use the water sufficient to reimburse the cost of the work and keep it always in repair, and obliges those authorities to reduce the charges to the people when the loans and debts are paid, and secures to the inhabitants all the advantages and blessings which the supply of an abundance of pure and wholesome water brings with it; secures them against the exactions of avarice and monopoly, while, at the same time, the provisions of this bill preserves in complete order this noble structure and work in the hands of the government, and secures and perpetuates to itself the advantages of a copious supply of the Potomac water for all governmental uses and purposes in the national metropolis. The committee, therefore, recommend the passage of this bill.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 5, 1859.—Ordered to be printed.

Mr. FITCH made the following

REPORT.

[To accompany Bill S. 564.]

The Committee on Indian Affairs, to whom was referred the petition of Israel Johnson, of Cass county, Indiana, with accompanying evidence, respectfully report:

That it appears from the sworn evidence submitted that, at the attempted treaty with the Miami tribe of Indians in the year 1833, at the forks of the Wabash, the said Johnson, at the request and under the direction of General Wm. Marshall and General Nicholas D. Grover, Indian agents, hauled from Logansport to said treaty ground, three loads of baggage and provisions for the United States, for which he was to receive from the United States forty-five dollars per load, making \$135. That he also hauled, by the orders of said agents, one load of baggage from the treaty ground to the payment ground of the Pottawatomies, on the Tippecanoe river, for which he was likewise to receive forty-five dollars.

That, while the said Indians were in council, he also, by the direction of the said agents, gave a public dinner to the chiefs and head men of the Pottawatomies, to promote the efforts to induce them to treat, for which he was to receive seventy-five dollars.

That he was also employed by said agents to transport six boys of the Pottawatomie tribe to Madison, on the way to the Choctaw Academy, in Kentucky, for which, on behalf of the United States, they agreed to pay him one hundred dollars.

He also sets forth that, by the direction of said Indian agents, being a hotel keeper at Logansport, he entertained and kept a large number of Indians and their horses, for some time prior to said attempted treaty, for which he charges two hundred and twenty dollars.

His whole claim thus amounts to five hundred and seventy-five dollars. But the last item above specified for entertainment of the Indians prior to the treaty is regarded by the committee as not being as much within the equity of the case against the United States as the other charges, although doubtless furnished by Mr. Johnson in good faith. Deducting that, would leave three hundred and fifty-five dollars, which we consider equitably due to the petitioner, having

been authorized and requested by the officers of the United States, and all incidental to the formation of an important treaty with the Indians.

The rendition of these services and the reasonable character of the charges are both supported by abundant testimony. General Grover, one of the agents who requested their performance, thus testifies and further declares that, "having been sub-agent or agent during the treaties by which most of the lands in northern Indiana were purchased of the Indians, the same power was authorized and exercised for expenses of this character." The testimony of Hon. Chauncey Carter, Hon. J. W. Wright, J. B. Duret, and J. Vigus, esqs., amongst the oldest citizens of Logansport, who were cognizant of these services being performed, that they were authorized, and that the charges are reasonable, also accompany and corroborate the petition before the committee.

While other allowances of a similar character for services at the same time were allowed by the War Department, this claim was omitted through the negligence of General Marshall, the chief agent and commissioner. On the failure of the treaty, the accounts were hurriedly made up during the night following, and the treaty ground abandoned early the next morning. Mr. Johnson was at that very time absent, hauling a load for the United States to the Pottawatomie payment ground, and being out of sight was forgotten in the hurry of the hour. General Grover, in his affidavit, explains this by allusion to the well known carelessness, in the matter of accounts, of his superior.

It appears also, from the evidence, that the reason why the claim has been so long pending is as follows: After Mr. Johnson found that his claim had not been certified, he appealed to General Marshall, who had ordered the services, to pay it himself, which he consented to do when he received money from Washington to pay the expenses; that after waiting a year, and in vain, Marshall then said he would have to certify it before it could be paid, which he then did in a book, although out of office, and the book itself was lost by an attorney employed by Johnson, and could not be found after the attorney's decease. Up to 1845, Johnson supposed Marshall would have to pay it himself, Marshall asking him to take trade for it, which he consented to do but could never obtain.

Since that time his claim has been pending before Congress. It has been twice reported favorably, in the Senate, and in the House, by their Committees of Indian Affairs, and in 1854 a bill for his relief passed the Senate, but failed to be reached in the House. The committee therefore recommend the passage of the accompanying bill, as equitable and just, having reduced the claim to three hundred and fifty-five dollars.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 9, 1859.—Ordered to be printed.

Mr. HAMMOND submitted the following

REPORT.

The Committee on Finance, to whom was referred the memorial of Messrs. Kunhardt & Co. and others, have had the same under consideration, and report as follows:

The memorialists are the agents of the steamship companies whose steamers carry the mails between New York and Hamburg and New York and Bremen, receiving as compensation for this service the sea postage. They aver that their several steamships were all built in England, and, from the peculiar construction of their boilers and furnaces, burn American coal to great disadvantage, and are therefore obliged to burn English coal. And they ask that they shall be allowed the proper drawback of the duties on the English coal consumed in their voyages from America to Europe, and that their bonds heretofore given on the importation of coal shall be cancelled.

They admit that the act of 1799 does not embrace their case, and does not entitle them to drawback; but that the justice and equity of a modification of that law seem to be fully established by the decision of the commissioners, under a convention concluded between the United States and Great Britain in 1853. And on that ground, and for general commercial considerations, they ask that such a modification of the law relating to drawbacks on exportations may be made.

By the 7th section of the act of March 3, 1853, making appropriations for the civil and diplomatic expenses of the government, it was enacted "that the Secretary of the Treasury should be authorized to cancel any outstanding debenture bonds given prior to July 1, 1850, upon the importation of foreign coals, provided said coals have been exported to a foreign port or consumed on the outward voyage, and shall not have been consumed in the United States." There is nothing more in that act referring to this subject.

Mr. Secretary Guthrie, as early as April 1, 1853, decided, and your committee think correctly, that this act only gave him authority to cancel the bonds on proof of the consumption of the coals, and did not authorize the restoration of duties that had been paid; and, he might have added, that this authority extended only to the cancelling of bonds given prior to July 1, 1850.

The commissioners, however, under the convention of 1853, decided

to allow to the Great Western Steamship Company a drawback of \$11,437 25, with interest from July 1, 1850, for duties paid on coal prior to 1846.

Congress had passed an act, approved July 7, 1838, exempting from duty coal on board foreign vessels arriving in the United States and pursuing their voyage without landing their coal; but the case of the Great Western Steamship Company did not come under this act, nor does it meet the views of the memorialists. In that case the coal was landed, stored, and paid duties, having been shipped by other vessels to New York for the use of the Great Western Steamship Company, and the memorialists desire to alter the law so as to permit them to do the same. Under this act of 1838, and in consequence of a construction of the act of 1799 reported by a committee of the Senate, which was laid upon the table by a vote of 26 to 16, on March 3, 1840, and thus rejected, a Secretary of the Treasury had, for a short period, allowed the drawback on coals.

It was avowedly in consideration of the act of 1838, and the construction of the committee of the Senate, although disavowed by the Senate, and the interpretation of Mr. Secretary Forward, soon after corrected, and because otherwise the act of 1853 would be almost nominal, that the commissioners of the convention of 1853 assumed to legislate upon the matter and award the sum above named, in despite of Mr. Secretary Guthrie's decision.

Your committee concur with Mr. Guthrie, and believe that the decision of the commissioners was without warrant of any law enacted from the commencement of this government.

It is due to the memorialists to say that they do not assume that that decision was legal, but cite it to support their request for a modification of existing laws which "equity and an enlightened policy of commerce and commercial intercourse between commercial nations seem to make necessary and desirable." Your committee ardently desire that all nations should adopt an equitable and enlightened policy of commercial intercourse, and the United States have, in some signal instances, been the first to suggest and adopt such a policy. But our country cannot alone establish such a policy at her own cost. If Great Britain will build steamships adapted to the use of English coal alone, and the Hamburg and Bremen steamship companies will purchase and use such ships, your committee are of opinion that the United States are not required by "equity or enlightened policy" to discriminate—

First. Against the ship-builders of the United States. Second. Against the coal miners of the United States; and, third, against the mail steamers of the United States, by making such a modification of our laws as the memorialists request.

The system of drawbacks is a comity among friendly nations by which one is permitted to experiment upon the markets of another. In the main it is mutually advantageous, but requires to be judiciously restricted. Your committee are of opinion that the act of 1838 goes far enough for the present, and ask to be discharged from a further consideration of the subject.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 14, 1859.—Ordered to be printed.

Mr. RICE made the following

REPORT.

[To accompany Bill S. 577.]

The Committee on Post Offices and Post Roads, to whom was referred the petition of Sheldon McKnight, praying additional compensation for carrying the mails on the Cleveland, Detroit, and Lake Superior routes, from the year 1848 to the present time, have had the same under consideration, and beg leave to report :

The petitioner alleges that he transported, at the request of the postmasters and agents of the Post Office Department, the United States mail, in steamboats, between Cleveland, Ohio, and Detroit, Michigan, and the several ports on Lake Huron and Lake Superior, from the year 1848 up to the present time, during the season of navigation, for which service he has not received adequate compensation, and he therefore prays that Congress will allow him a fair and equitable remuneration for said service.

The evidence before the committee is clear and satisfactory of the faithful and efficient character of the service rendered by the petitioner, and that it was undertaken and performed at the request of the officials having charge of the mails.

The most satisfactory evidence of the performance of the service is to be found in the testimony of Captains S. W. Turner, John Wilson, and R. S. Ryder, confirmed by lengthy affidavits of John Senter, Michael Duffy, Daniel Pitman, A. S. Williams, Peter White, M. M. Williams, postmasters; and John Griswold, James Mercer, R. S. Graveraet, and Henry J. Buckley, shipping merchants and business men at the different points along the route of this service. This evidence, coming from men of character and experience, fully conversant with all the facts connected with the transportation of the mails on this route, and competent to judge of the inadequacy of the compensation allowed the petitioner for said service, the committee are disposed to place the fullest reliance thereon as substantiating the facts alleged by the petitioner.

The evidence being somewhat voluminous, the committee will not burden the Senate with its full publication, as it would probably occupy many pages of printed matter, but will solicit its attention to

the very explicit affidavit of Captain John Wilson, appended to this report, marked Exhibit A.

All the witnesses concur in the opinion set forth at length by Captain Wilson, that the petitioner, who was the pioneer in the steam-boat service of the northwestern lakes, having performed the service of mail contractor at a time and under circumstances of great hazard to life and property, ought to receive compensation proportionate to the service rendered and danger incurred.

Captain Redmond S. Ryder, who has had eighteen years experience in navigation of the lakes, corroborates the statement of Captain Wilson, and mentions numerous instances of the mails being carried by land at the petitioner's expense during boisterous periods of the year when a landing could not be effected by his boats at various points of mail distribution. Other witnesses testify that the petitioner's vessels have been detained for hours at points where a landing could only be effected by small boats at great risk, when it was not incumbent upon the petitioner to incur that danger, he being actuated only by a desire to accommodate the inhabitants of an isolated portion of the country, and the hope of eventually receiving a proper remuneration through the representations of the local postmasters at whose solicitation the service was performed.

The following extract of a letter from Mr. Dundas, Second Assistant Postmaster General, to the petitioner, dated January 26, 1859, contains an acknowledgment of valuable services rendered the department by the petitioner.

"As regards your intercourse with the department, in performing mail service and in furthering the mail facilities upon the upper lakes, it is only simple justice to state that your efforts in that direction have been meritorious and of an honorable character, and that you have, in some instances, been of *great service* to the department in effecting the mail facilities for that upper country."

Further evidence exhibits the losses sustained by the petitioner in steamboats and propellers by various casualties upon the upper lakes, amounting in the aggregate to \$130,000, the greater part of which is irretrievable, owing to the impossibility of effecting insurance after the 20th of November.

The committee are satisfied from all the evidence in the case that the service for which compensation is sought was actually and faithfully performed, that the interests of a large and active business community engaged in the development of an important source of national wealth, required the performance of the service rendered by the petitioner and for which he has not received any adequate compensation.

The only compensation received by the petitioner for the entire service was what was paid him by the postmasters on the route for carrying the local mails at the nominal compensation of one cent each for letters and half a cent each for newspapers which mails formed but a small part of the entire mail transported by him. The larger portion of the mail was what is commonly known as the "through mail," for the transportation of which no compensation whatever was allowed.

The present compensation for this service under contract is one hun-

dred dollars per round trip, a distance of twenty-two hundred miles, which is probably the cheapest service in the United States, which your committee believe should be awarded to the petitioner for his services, and they report a bill accordingly and recommend its passage.

EXHIBIT "A."

STATE OF MICHIGAN, *Wayne county, ss.*

I, John Wilson, of lawful age, being duly sworn, depose and say ; That my occupation is that of a mariner ; that I have been engaged in said business on the Northwest lakes for 21 years ; that I have acted in the capacity of master for 13 years ; am well acquainted with Sheldon McKnight and his Lake Superior line of steamers, and know that the affidavit of J. T. Whiting, with the accompanying schedules A and B, exhibiting the number of steamers belonging to McKnight and employed on the Lake Superior route, as also the exhibit of the number of steamers lost, to be a true and correct statement ; that I was employed by said Sheldon McKnight in the capacity of master during the season of 1851, having charge of the Monticello until her loss at Misery bay, on Lake Superior, and in 1852 of the steamer Baltimore ; that I assisted in the hauling of said steamers over the land distant one mile around the Falls of St. Mary ; that I sailed for said McKnight during the season of 1855, 1856, and 1857, as master of the steamer Illinois and know that she run regularly between Cleveland, Detroit, and Lake Superior. I am well acquainted with the navigation from Cleveland to Superior City, and state that it is the most perilous and difficult of all the other lake routes with which I am acquainted ; that the expense of running steamers on said Lake Superior route is about one-fourth greater than on the other lake routes ; that I am well acquainted with the manner of delivering the United States mails on Lake Superior, having carried the mail on said lake, and I state that, from the insufficiency of the harbors on Lake Superior and the roughness of the lake, and the frequency of being compelled to land the mails at night and in open boats, remaining off shore with the steamer, the mail service is not only difficult, but peculiarly dangerous and hazardous ; and I further state that frequently, having had to run by various ports from stress of weather, I have sent back the United States mails, over land, at considerable expense to the steamer.

And I further state from my own personal knowledge that said McKnight's line of steamers have carried regularly the United States mail since the year 1849, myself having observed the said mail going on and off of his boats since that period ; and I furthermore state that, owing to the extra insurance on boats running on this route as well as the impossibility of obtaining insurance risk after the 20th of November, the value of the service performed in carrying the United States mail on the said route is not less than \$125 per round trip from Cleveland and Detroit to Sault Ste. Marie, and \$200 per round trip from Cleveland and Detroit to Ontonagon, Superior City, and La Pointe.

I say the above from the fullest knowledge of the expense, danger, and trouble attending the navigation of said route.

J. WILSON.

Sworn to and subscribed before me this seventeenth day of December, A. D. 1858.

DE GARMO J. WHITING,
Notary Public, Wayne county, Michigan.

STATE OF MICHIGAN, *County of Wayne, ss.*

I, Enos T. Throop, clerk of said county, and clerk of the circuit court for the county of Wayne, do hereby certify that De Garmo J. Whiting, whose name is subscribed to the jurat of the annexed instrument, and therein written, was at the time of taking such jurat a notary public in and for said county, duly commissioned and qualified, and duly authorized to take the same; and further, that I am well acquainted with the handwriting of such notary public, and verily believe that the signature to the said jurat is genuine.

In testimony whereof, I have hereunto set my hand and affixed the [L. S.] seal of said court and county, at Detroit, this 17th day of September, A. D. 1858.

E. T. THROOP, *Clerk.*

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 14, 1859.—Ordered to be printed.

Mr. YULEE submitted the following

REPORT.

The Committee on Post Offices and Post Roads, to whom was referred the petition of citizens of Jackson, California, soliciting tri-weekly service on the line from St. Joseph, Missouri, to Placerville, California, beg leave to report:

That upon reference to the Post Office Department, it is found that there is already now paid the sum of \$320,000 per annum for a weekly service upon the same route, and that the increased service proposed would add \$640,000 per annum to its cost, making a total of \$960,000 per annum. The committee cannot recommend the prayer of the petitioners to the favor of the Senate, and ask to be discharged from its further consideration.

POST OFFICE DEPARTMENT, *February 7, 1859.*

SIR: With regard to the contents of the petition from citizens of Jackson, California, herewith returned, soliciting tri-weekly service on the line from St. Joseph, Mo., to Placerville, I have the honor to state in answer to your interrogatories, that the expenditure required to give effect to the request would be \$640,000 per annum, in addition to the present cost of service on the road; and that, in my judgment, the postal interests and the present condition of the public finances, do not warrant such increase of the expense.

The only legislation called for, in case it were deemed advisable to put on the extra service, would be to provide an appropriation to cover the expense.

The department has now on the road a weekly mail in each direction at a cost of \$320,000 per annum.

Very respectfully, your obedient servant,
AARON V. BROWN,
Postmaster General.

Hon. D. L. YULEE, *U. S. Senate.*

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 15, 1859.—Ordered to be printed.

Mr. SEBASTIAN submitted the following

REPORT.

The Committee on Indian Affairs, having had under consideration the memorial of Peter P. Pitchlynn and others, Choctaw delegates, referred to them on the 18th of March, 1856, submit the following report:

The treaty of June 22, 1855, between the United States and the Choctaws and Chickasaws presents certain questions for adjudication to the Senate in the following terms:

ARTICLE XI. The government of the United States not being prepared to assent to the claim set up under the treaty of September 27, 1830, and so earnestly contended for by the Choctaws as a rule of settlement, but justly appreciating the sacrifices, faithful services and general good conduct of the Choctaw people, and being desirous that their rights and claims against the United States shall receive a just, fair and liberal consideration, it is therefore stipulated that the following questions be submitted for adjudication to the Senate of the United States:

“First. Whether the Choctaws are entitled to, or shall be allowed, the proceeds of the sale of the lands ceded by them to the United States by the treaty of September 27, 1830, deducting therefrom the costs of their survey and sale, and all just and proper expenditures and payments under the provisions of said treaty; and if so, what price per acre shall be allowed to the Choctaws for the lands remaining unsold, in order that a final settlement with them may be promptly effected; or

“Second. Whether the Choctaws shall be allowed a gross sum in further and full satisfaction of all their claims, national and individual, against the United States; and if so, how much.”

ARTICLE XII. “In case the Senate shall award to the Choctaws the net proceeds of the lands ceded as aforesaid, the same shall be received by them in full satisfaction of all their claims against the United States, whether national or individual, arising under any former treaty; and the Choctaws shall thereupon become liable and bound to pay all such individual claims as may be adjudged by the proper authorities of the tribe to be equitable and just; the settlement and payment to be made

with the advice and under the direction of the United States agent for the tribe; and so much of the fund awarded by the Senate to the Choctaws as the proper authorities thereof shall ascertain and determine to be necessary for the payment of the just liabilities of the tribe shall, on their requisition, be paid over to them by the United States. But should the Senate allow a gross sum in further and full satisfaction of all their claims, whether national or individual, against the United States, the same shall be accepted by the Choctaws, and they shall thereupon become liable for and bound to pay all the individual claims as aforesaid; it being expressly understood that the adjudication and decision of the Senate shall be final."

The peculiar language of the treaty of 1855 shows that the first question which it devolves upon the Senate to decide is, in reality, a double one. The inquiry is not only whether the Choctaws are "*entitled*" to the net proceeds of the lands ceded by them in 1830, but also whether, though not legally so *entitled*, they shall still "*be allowed*" them.

Their claims, the determination whereof is thus submitted to the Senate, are to receive not only a just and fair but a *liberal* consideration. This is expressly stipulated by the treaty; and this is eminently due to the many sacrifices of the Choctaws, both in war and peace; to their faithful services never withheld and always cheerfully rendered in arms, and to their exemplary and uniform good conduct and peaceful demeanor since the earliest settlement of the white race in the fertile and valuable country formerly occupied by them.

In order satisfactorily to perform the duty devolved upon it by the reference of this subject, the committee propose, first, to present in this report a condensed statement of the principal facts and positions stated and assumed by the Choctaws in relation to the two propositions referred to the Senate, and then to give the conclusions at which the committee has arrived.

In support of their claim to the net proceeds, the Choctaws rely upon the stipulation in article 4 of the treaty of 1820, that the boundaries then established should "*remain without alteration*" until the period when the Choctaws should become so civilized and enlightened as to be made citizens of the United States, and Congress should "*lay off a limited parcel of land for the benefit of each family or individual in the nation.*"—(7 Statutes at Large, 211.)

This stipulation, they say, was intended to carry out the assurances given them by the commissioners who negotiated that treaty, to the effect that the lines then to be established should be *permanent*; that the white people should never seek to obtain any more of their land; and that those lines should never be altered until they should themselves request it, or until they were advanced to such a state of civilization, "*when the land will be apportioned out to each family or individual in the nation.*"

This language, they insist, meant that the residue of their lands not then ceded should be theirs in fee or perpetuity, to remain the common property of the nation until, at the proper time, there should be a *partition*, and *the whole* of it should be divided among themselves.

And they claim that, as this understanding was not fully carried out by the letter of the treaty of 1820, or at least as there was ground

for misunderstanding in the language of that treaty, (though the words "a limited parcel" evidently applied to the separate share of each *family* or *individual* of the *whole* of the land, and did not mean that only a limited parcel, or part only, of the whole should be divided among *all*,) the treaty of 1825 provided that the 4th article of that of 1820 should be so modified that Congress should exercise the power "of apportioning the *lands* for the benefit of each family or individual of the Choctaw nation" only with their consent.—(7 Stat. at Large, 236.)

They claim that the legal meaning of these two articles, taken together, was, that the boundary should remain unaltered until they should be fit to become, and should choose to become, citizens of the United States, when the *whole* of their lands should be partitioned and divided among them.

And they claim that, by the application of ordinary legal principles, as they were to hold in fee *after* the partition, and as the partition of lands held in common gives no *new* title, but the party is in possession of the *original* title, the treaty of 1820, as modified by that of 1825, gave the nation the fee to all the lands not thereby ceded.

This conclusion is, in the opinion of the committee, correct in point of law; and so, they are advised, it has been decided by the Attorney General in a parallel case.

They claim that, this being so, the treaty of 1830 would evidently have been unjust if it had not intended to give them the net proceeds of those lands, and if its true construction is that the United States meant thereby to take a part of the same to their own use without making them any compensation whatever for that part.

For, they say, they obtained, by way of consideration, no new or larger title than they before had, under the treaty of 1820, to the lands now held by them west of the Mississippi, inasmuch as by that treaty they had to those lands the right of perpetual occupancy and exclusive usufruct, without power of alienation or disposition, but with reversion to the United States on extinction of them or abandonment thereof by them; and that although the treaty of 1830 *purported* to give them a fee-simple and provided for a patent, yet the title continued to be, essentially and precisely, only such right of perpetual occupancy and usufruct as it was before, the power of alienation being an indispensable part of title in fee-simple. In this also, as matter of law, the Choctaws are entirely correct.

To show that they understood, when making the treaty of 1830, that they were to receive all that should be realized from the sale of their lands, they refer to the journals kept by the commissioners who negotiated the treaty, and to their assurances that the United States desired only to extinguish their *jurisdiction* over the country held by them, and did not wish to make any profit from their lands; and in desiring them to emigrate west were only actuated by motives of kindness towards them and a wish to place them beyond the reach of State laws and out of the jurisdiction of the whites.

The United States thus earnestly pressed the Choctaws to dispose of their country, in order to quiet the great discontent of the State of

Mississippi, at the continuance of an organized Indian community within her limits, not responsible to her laws. The idea of abandoning their homes was very repugnant to the Choctaws, who had been from time immemorial a settled, semi-civilized, and agricultural people, attached to their homes and their household gods. And as, they say, all that the United States could justly require them to do, with a due regard to the guaranties of the treaties of 1820 and 1825, was to consent to let the whole of their lands be partitioned among them in severalty, their assent could only be obtained by securing to all who chose to remain specific portions of such lands in fee-simple, and by leaving every one free to remove or remain, as he might prefer.

In justice, the portion so allotted to each should have been equal to his full share and equal proportion of all the lands; and perhaps it would have been very nearly so if the share finally fixed on *had* been given to each family or individual of the tribe, including as well those then west as those then east of the Mississippi. Even then it would not have been a *full* share.

While this provision, imbodyed in the 14th article of the treaty, approximately at least, secured to all who determined to remain that equal share and portion of the common lands guarantied by the treaties of 1820 and 1825, those who concluded to emigrate could not, the Choctaws conceived, justly be deprived of *their* right to an equal portion and share of the common lands, or compensation in lieu thereof; and this is self-evident. The various stipulations in *their* favor were made exclusively to compensate them for the loss of their homes and improvements, and other losses consequent upon a change of residence; more than half the expenditures under the treaty for *their* benefit being for expenses for their removal and the cost of one year's subsistence in their new homes.

Whatever remained of the proceeds of their lands after discharging the specific obligations created by the treaty justly belonged, the Choctaws insist, to those who had removed west prior to the treaty, still retaining their original interest in the common lands, and to those who were to remove after the making of the treaty, for whose benefit, they insist, the 18th article of the treaty was specially inserted.

That article provides that "the United States shall cause the lands hereby ceded to be surveyed, and surveyors may enter the Choctaw country for that purpose, conducting themselves properly, and disturbing or interrupting none of the Choctaw people. But no person is to be permitted to settle within the nation or the lands to be sold before the Choctaws shall remove. And for the payment of the several amounts secured in this treaty the lands hereby ceded are to remain a fund pledged to that purpose until the debt shall be provided for and arranged. And further, it is agreed that in the construction of this treaty, wherever well-founded doubt shall arise, it shall be construed most favorably towards the Choctaws."—(7 Stat. at Large, 336.)

This article, the Choctaws contend, ought to be considered as intending to declare that the proceeds of the ceded lands not reserved should be regarded as held in trust by the United States for their exclusive benefit; and that, upon no other construction can it be deemed intelligible. They ask why, if the cession were for the sole benefit of

the United States, the stipulation for a survey was inserted? They ask why the provision pledging the lands ceded as a fund to secure the payment of the amounts stipulated by the treaty? They say that it could not have been intended to create a lien on the lands, because the power of disposition by the United States was neither denied, suspended, nor subject to any condition or limitation. They urge that the cession of the lands remaining after the reservation allowed being made for the purpose of paying certain specified sums and amounts, and the proceeds being pledged for that purpose, and there being no provision as to the disposition to be made of the surplus, it belongs to *them*, by way of a resulting trust, because the lands were absolutely theirs in fee; and that it is the same case as where an individual conveys property to another to pay certain specified debts, without provision as to the surplus remaining after they are fully paid; in which case it is the ordinary rule of equity that the remaining undisposed of property or the surplus of proceeds, belongs to the original owner by way of a resulting trust.

They urge that this construction is greatly strengthened by the declarations of the commissioners who made the treaty, and also by the provision that whenever, in the construction thereof, any well founded doubt should arise it should be construed in favor of themselves. And they also think that the fact that, at nearly the same time, the United States did, by treaty, give the Chickasaws, their neighbors and kinsmen, speaking the same language with themselves, inhabitants of the same section of country, and no more deserving of favor and liberal dealing than they, the net proceeds of *their* lands, is not without its weight in the solution of this question.

The committee have felt that there is much force in these arguments. They have felt the force of the suggestion made by the delegates of this brave, deserving, and interesting people, that this was a purchase by a guardian of the property of his ward; that the Indian tribes are always minors, under our protection; that we cannot justly disown even an implied trust created in their favor in order to enrich ourselves; that to give them the net proceeds of their lands is, after all, but to give them what is their own, by which we should *lose* nothing and *suffer* nothing; that the implied promise of the nation should be sacred and inviolate; and that all just and fair expectations created by the acts of our agents, and which were the inducement to the making of the treaty, ought to be satisfied to the utmost.

But, upon the question whether the Choctaws are, upon the face of the treaty, *entitled* to the net proceeds of their lands, the committee still cannot find in the treaty itself sufficient warrant so to hold. The argument and the facts satisfy them that it *ought* to have been so, but not that it *is* so. Such is not, in their opinion, the legal construction of the treaty, though the equity of such a construction cannot be altogether denied; and to go behind the treaty itself and to seek for its true interpretation, contrary to its letter and legal effect, in the declarations of the commissioners, not inserted in the instrument itself, would be to establish what would certainly prove to be a very mischievous and dangerous precedent, and unsettle many treaties.

It is, therefore, the opinion of the committee that the judgment of

the Senate, on the first branch of the first question, should be that the Choctaws are not entitled in law and in strict right to the net proceeds of the land ceded by the treaty of 1830.

Passing now to the second question, whether the Choctaws shall be allowed a gross sum, and if so, how much, we find, on examination, that the most considerable among the items presented by the Choctaws, as properly constituting such gross sum, have their origin in the 14th article of the treaty of 1830.

If the intention of the treaty had been to extinguish the Indian title, by procuring from the tribe a cession of all its lands east of the Mississippi, and inducing all the Choctaws to remove to the west side of that river, then evidently the 14th article would have been wholly inconsistent with that general intention.

For, by that article, *every* head of a family in the tribe had the absolute right to remain and become a citizen of the United States, and retain for himself or herself, and for each of his or her children a very large share, in the aggregate, of the common lands, "by signifying his intention" to remain and become a citizen "to the agent within six months from the ratification of the treaty." There was no other condition precedent; and if the persons so remaining resided on their land, intending to become citizens of the States, for five years after such ratification, then they were to receive grants in fee-simple.

The explanation of this apparent self-contradiction is obvious, as the commissioners had assured the Indians the object of the United States was not to force them to go west nor to obtain any part of their lands. They desired only to effect the extinction of their *jurisdiction*, by parcelling out those lands in severalty among them, giving them fee-simple titles, making them citizens, and thus annulling *their* laws, and extending over their country the laws of the States in which the lands lie. If the *whole* of their lands were thus apportioned among them, they so becoming individual citizens of Mississippi, holding in fee-simple, that object was fully attained, the "Indian title" was completely extinguished, the Indian jurisdiction abolished, the Choctaw nationality east of the Mississippi annihilated, and the laws of Mississippi enabled to operate over every foot of those lands, then become taxable by her, without impediment or obstruction.

Accordingly, the 14th article affirmed the right of every Choctaw head of a family in the tribe to remain and become a citizen of the United States. They had but "to signify their intention" to do so to the agent within six months. The *mode* of such notification was not prescribed; of course no special, technical form of giving it was required. When it was given, each such head of a family became entitled to a reservation of 640 acres of land for himself, 320 for each unmarried child over ten years of age, and 160 for each under ten, living with him or her.

Every one that so remained, though in law and fact a joint owner of *all* the lands east and west of the Mississippi, lost thereby all interest in the lands west, unless he or she afterwards removed west, and received no part whatever of the *price* of the unreserved lands east; and even if he or she afterwards removed, no part of the na-

tional annuities. If one so remaining got no *reservation*, he got *nothing at all* for his interest in the lands.

Such being the case, as *every* one had the right to remain, and as those remaining received no compensation for their interest in the lands, if by any means they failed in securing reservations, it followed that the United States could not attempt to force them to remove, so *as to confiscate to their own use the reservations by such removal forfeited*; they could not interpose any difficulties in the way of their notifying their intention to remain, nor prescribe any onerous mode of doing so, nor require any particular formality unlikely to be easily complied with; and most certainly could not endeavor, by any law or executive regulation, to add to or alter those provisions of the treaty made for their benefit.

For it must be admitted, as the Choctaws urge, that as the United States, having by the treaty taken the possible chance that *all* might remain and claim reservations, were to be profited by the value of every reservation of which the Choctaws could be deprived, they could not use any unfair means, as by imposing unauthorized conditions, or even by failing to protect the reserves against violence on the part of individuals, and over-zeal on the part of agents of the government to effect their removal, and the consequent loss of their reservations, any more than they could be astute in discovering devices by which to avoid securing reservations to those who did really remain.

If *all* the Choctaws *had* taken reservations and remained, there would have been no expenditures for removal, subsistence, annuities, &c.; and the quantity of land included in all the reservations would have been, from all that can be learned of the number of the Choctaws at the time, about 7,250,000 acres. Their lands were in all but 7,796,000 acres; thus leaving, for the interest of those who had previously removed, only about 546,000 acres.

It being presumable, however, that many would remove, the 19th article made provision for remunerating them for or securing to them the value of their improvements, by agreeing to give to 1,600 heads of families, if necessary, and so many should remove, reservations amounting in the aggregate to 458,400 acres, to include their improvements; which they might sell, or the government would pay them therefor, when they reached their new homes, at the price of fifty cents per acre.

There can be no doubt that when the treaty was ratified, a large portion, probably more than half, certainly more than a third, of the tribe intended to remain. The agents of the government, however, deemed it their duty to discourage that intention, and effect, if possible, the removal of the whole. It appears that in one locality some five or six thousand persons intended to form a sort of colony, but that the plan was abandoned in consequence of the threats of the government officers and emigrating agents, who caused nearly every family embraced in the scheme to emigrate "through fear of personal violence." Not more than fifteen or twenty of these persons remained long enough to secure grants in fee-simple.

It appears, however, that a very large number of others did remain

a sufficient length of time. In 1844 the government agent, Governor McRae, of Mississippi, reported that 7,000 Choctaws were still in the ceded country. Out of nearly 1,600 families embraced in this number, only sixty-nine were reported by the government agent as entitled to land. Ultimately seventy-four more families succeeded in securing reservations. The others, constituting more than nine-tenths of those who remained, failed to obtain any land at all. They made repeated applications for relief. In 1836 their claims were carefully investigated by a committee of the House of Representatives. The report of the chairman, the Hon. John Bell, clearly explains the whole subject. The difficulty arose in part from the violent means used to coerce emigration, but chiefly from the refusal of the agent to permit the Indians to signify their intention to remain. The treaty was ratified on the 24th of February, 1836, and no instructions were sent to the agent to receive the Indians' notices of intention to remain until May; and he then refused to receive nearly all of them—*two hundred* at one time. Their rights were consequently not recognized at the land offices and their lands were sold by the government. An act providing for a commission to examine their claims was passed on the 3d of March, 1837, but expired by its own limitation before the commissioners had investigated one-fourth of the claims presented. Another act for the same purpose was passed in August, 1842. Under the authority given by these two acts, and others of a supplementary character, the claims of over 1,500 families were adjudicated. Only 143 secured their proper locations; 1,150 others were ascertained to be entitled, as having in all respects and in due time complied with the treaty requisites; but, in the meanwhile, their improvements having been disposed of, Congress directed scrip to be issued, authorizing them to enter other lands in exchange for the tracts reserved by the treaty.

The nature of this scrip, the mode of its issue, and the facts connected with its delivery, all have a material bearing on the principal items constituting the gross sum claimed by the Choctaws.

The 3d section of the act of 23d of August, 1842, provides that where it is made to appear clearly that the claimant is entitled to a reservation under the 14th article of the treaty of 1830, a patent shall be issued for the land, unless it has been previously disposed of by the United States; in which case an equal quantity shall be allowed elsewhere out of any public land "subject to entry at private sale," in Mississippi, Louisiana, Alabama, or Arkansas, "and certificates to that effect shall be delivered under the direction of the Secretary of War, through such agent as he may select, not more than one-half of which shall be delivered to said Indian until after his removal to the Choctaw territory west of the Mississippi."

Nothing is said about a removal west in connexion with the delivery of the other half of the certificates, and no allusion is made at all to the removal of those Choctaws who secured the locations reserved for them by the treaty.

The Secretary of War, however, made the emigration of the claimants a condition precedent to the delivery of any part of the certificates. At first he simply required evidence that the Indian was about

to start. Afterwards he prohibited the delivery until after the arrival of the claimant in the Choctaw country, west.

Certificates for 700,080 acres were delivered to the claimants, for which it is alleged that they realized but \$118,400, an average of less than 17 cents an acre, instead of \$875,100, the par value at \$1 25.

The other half, which by the act of 1842 was not to be delivered until after the removal of the Indians west, was not delivered at all. On the 3d of March, 1845, Congress directed that it should not be issued, but should carry an interest of five per cent., regarding the land as principal at \$1 25 per acre. The amount thus funded was afterwards paid over to the claimants, in bulk, under an act passed July 21, 1852.

The Choctaws, in their various communications, complain of having been treated with great injustice in this matter.

They allege that the treaty secured, and could not have been made without securing, to those who remained in the ceded territory the right, not merely to stay, but to stay in their own homes, to cultivate their own fields, to do as they pleased with their own property, and to become citizens of the United States; that the treaty stipulation for this purpose was deliberately nullified by the government agents; that their reservations were not recognized at the land offices; that they were deprived of their lands and driven out of their houses; that more than ten years elapsed before they received any indemnity whatever; that when it did come, it was in the shape of land scrip, nowhere equal in value to the minimum price of public land, and which they were not allowed to touch until they first agreed to go where it could not be located, their own property being used as purchase money to buy, not merely their right to remove, but also their consent to go where it would be worthless. Even if the scrip had been equal to \$1 25 per acre, it was still far short of what they ought to have received, for, to say nothing of the much higher value of land in 1836, when their titles ought, by the terms of the treaty, to have matured, or of the actual loss sustained by reason of dispossession, which in their case was the loss of food and shelter, they contend that, inasmuch as the lands of which they were deprived were sold by the United States, the proceeds belonged to the reservees, and that the government ought, at the very least, and in strict justice, to account for them by making up the difference between what the claimants actually realized and the amount actually paid into the treasury for their lands, with interest up to the date of payment, and that even then they would have received far less than what was right and just, since it was their right, under the treaty, to *remain* in possession of their farms and improvements until their title ripened, in five years, into a fee-simple, and then to sell or not, as they pleased, at their leisure, their farms for a full, and fair, and adequate consideration. But the government, they urge, and with great reason, habitually sold the lands for the minimum price of \$1 25 an acre, when much of them was worth from five to ten, fifteen, and twenty dollars, and they could have sold for those prices if they had been allowed to remain and been adequately protected. It must be admitted as self-evident that to value all such farms and plantations at \$1 25 an acre was

giving no adequate compensation to the owners, and it is known that reservees who were so fortunate as to be protected in possession did afterwards sell their lands for many times the minimum price.

Another class of demands under the 14th article consists of the claims of two hundred and ninety-two families who remained in the ceded territory, but have not as yet secured either land or scrip. Thirty-eight of these claims, from some cause not stated, have not been adjudicated, although regularly examined. Of the two hundred and fifty-four adjudicated cases, one hundred and ninety-one have been rejected on the ground that the claimants did not reside on their improvements the full term of five years contemplated by the treaty. Thirty-one were rejected because the claims were not represented by the "head of a family;" thirteen because the proof was not sufficient that the parties signified their intention to remain. Five cases depended upon the testimony of witnesses subsequently impeached, and fourteen were rejected for various miscellaneous causes.

To these various objections the Choctaws reply, in general terms, that the grounds for rejecting most of these cases are found in the peculiar provisions of the acts of Congress under which they were adjudicated, and not in the treaty itself, which is the paramount law; that the treaty evidently meant to provide for *all* who remained in the ceded territory; that the only question to be settled in any of these cases is, did the applicants intend to remain? And that in nearly every instance unanswerable proof of such intention is found in the fact that they *did* remain fifteen years after the treaty.

The act of 3d March, 1837, required claimants to show that they had complied or offered to comply with the requisites of the 14th article, in order to be entitled to a reservation.

That of 22d February, 1838, cut off all claims of any persons who had removed west of the Mississippi river.

That of 22d June, 1838, directed sufficient lands to be reserved from sale to satisfy all reservations of Choctaws whose lands had been sold by the United States, through the neglect or default of any government officer.

But on the 1st of June, 1840, lands covered by pre-emption claims were excepted out of this enactment.

And on the 4th of September, 1841, the act of 22d June, 1838, was repealed altogether.

The act of August 23, 1842, providing for the ascertainment of such Choctaws as had complied with the requisites of the 14th article, defined those requisites to be:

1. That the Indian signified to the agent, within six months after the ratification of the treaty, his intention to remain and become a citizen.

2. That at the date of the treaty he "had and owned" an improvement, on which he resided for five years from the ratification of the treaty, unless it were shown that the land was sold by the United States during these five years, and the claimant dispossessed by means of such sale.

3. That he had received no land under any other article of the treaty.

4. That he had not emigrated, but continued to live in the ceded territory.

White men having Indian families were to be allowed no reservation, though members of the nation by adoption.

And no claim was to be regarded that had been sold or assigned within the five years.

It is evident that the exclusion, in February, 1838, of all who had then emigrated, reiterated by the act of 1842, was in violation of the rights of the Indians under the treaty, because those who remained until the 24th day of February, 1836, five years after the treaty was ratified, were then entitled to an estate in fee, and could then, at least, sell and dispose of the lands so held, and at any time after remove to the west. Removal after this period could not work a forfeiture; nor when the agents of the government had used every appliance of persuasion, intimidation, and force to induce or compel the reserves to remove, could the removal so procured in justice deprive the Indian of his title to his land.

The act of 1842 went far beyond the treaty in requiring the party to have had and owned an improvement. This the treaty did not require; and so it was very properly decided by Mr. Attorney General Grundy.

It went beyond it in requiring him to have resided continuously on *the same* improvement for five years, because the treaty did not *confine* the Indian, in the selection of his reservation, to the land on which he resided or had an improvement; but only gave him the *privilege* of selecting that if he preferred it. It was a provision in his favor.

Nor can it be contended that it was not going beyond the treaty to give him no land in the country ceded, where he could not, in consequence of the sale of the land, have that which included his own improvement, but to give him scrip only, and require him to remove west of the Mississippi before he should receive more than one-half of it, since his right was two-fold, and each part of it of value, to have the quantity of land stipulated in the country which was his home, and to remain there and be a citizen of the United States; and this provision compelled him, in order to obtain an inadequate commutation for the former right, to surrender the latter, equally as valuable, and equally a part of the consideration, agreed to be given for the lands of the tribe.

White men with Indian wives were "Choctaw heads of families" upon any equitable construction of the treaty, because otherwise their wives and children, undeniably Choctaws, received nothing.

And the treaty had in no case forbidden alienations of claims to reservations within the five years.

In aid of these provisions of law, *none* of the scrip was delivered until after the emigration commenced in 1845. In March of that year Congress directed that the half whose delivery was postponed until after removal should not be issued at all. In autumn of the same year the War Department ordered that *none* should be delivered until the Indian had actually started or was about to start west; and in the spring of 1846 it ordered that none should be delivered until the Indian had *arrived* west.

The nineteenth article of the treaty of 1830 secures specific reservations to certain individuals by name, and to five classes of other reservees a quantity of land dependent upon the size of their fields. Thus—

	Acres.
To the 1st class, not to exceed 40 persons, having 50 acres in cultivation.....	640
To the 2d class, not to exceed 460 persons, having from 30 to 50 acres in cultivation.....	480
To the 3d class, not to exceed 400 persons, having from 20 to 30 acres in cultivation.....	320
To the 4th class, not to exceed 350 persons, having from 12 to 20 acres in cultivation.....	160
To the 5th class, not to exceed 350 persons, having from 2 to 12 acres in cultivation	80
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The aggregate liability in the five classes being.....	458,400
To which add an additional liability for 90 captains, of.....	28,800
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Making an aggregate liability of.....	487,200
The number of acres allowed is only.....	148,960
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Being less than the liability created by the treaty.....	338,240
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This deficit arose from the fact that the Choctaw fields were much smaller than was supposed.

For instance, 480 acres was provided for each family having 30 acres and less than 50 in cultivation, the whole number not to exceed 460. It turned out that instead of 460 families, only 46 had fields of that description, so that the reservations of this class amounted to 22,080 acres instead of 220,800.

The number of persons having fields of the required size fell short of the treaty limit in every class but the last, which included those having cultivated from two to twelve acres, each to have eighty acres. The number of reservations in this class was not to exceed 350, whereas it was ascertained that 1,763 families had fields answering this description.

The result was, that only 731 families obtained land instead of 1,600, and the number of acres was 123,680 instead of 458,400, falling short of the quantity indicated in the treaty by 338,240 acres. This amount the Choctaws claim should be made up to them.

To this should be added 23,200 acres for reservations admitted by the government belonging to the same classes, but which have never been located, making an aggregate of 361,440 acres, for which they claim, at \$1 25 per acre, \$451,800.

Another item in the Choctaw demand is for claims under the 16th article of the treaty of 1830, for compensation to those who emigrated at their own expense and have never received any allowance for transportation or subsistence—960 persons, at \$45 each, is \$43,200.

To those claims when heretofore presented, the Indian department has replied that, inasmuch as the government, by the terms of the

treaty, was under no obligation to remove any Choctaws after the year 1833 no such claims could be considered, although many thousands of dollars were appropriated and expended for the purpose of removing refugee Choctaws from Mississippi between 1844 and 1853.

It is also alleged that at the time of emigrating the Choctaws were compelled to leave behind and entirely lose 4,899 head of cattle, valued at \$30,835.

No evidence is adduced to show that this loss was in anywise owing to the neglect or bad management of the government officers, though from the facts stated by the Choctaw delegates, as to the course pursued by those officers, there cannot be much doubt that the stipulation of the treaty that the cattle of the Choctaws should be valued and paid for was not duly carried out.

The Choctaws also represent that they lost in consequence of this emigration—

2,796 head of horses, valued at.....	\$95,974 00
10,981 head of hogs, valued at.....	33,697 50
	<hr/>
	129,671 50
	<hr/>

These latter items could not, under any circumstances, be considered under the head of "cattle," within the meaning of the 16th article of the treaty. It is not shown by testimony that they were lost through any fault of the government, nor is there any evidence to support the allegations in regard to horses, hogs, or cattle, beyond the fact that they are contained in rolls prepared by commissioners appointed under the authority of the Choctaw government, and that it may naturally be presumed, that upon a forced removal much property of this kind would necessarily be lost, left, or sold at a great sacrifice.

Another item of \$36,632 49 is based upon a report of the Second Auditor, showing that amount to be due under treaties prior to 1830, being for arrearages of annuities payable during the pleasure of the President, and stopped by the Commissioner of Indian Affairs without the direction of the President, which the Choctaws contend was essential.

The sum of \$356,792 is claimed for Choctaws who emigrated prior to 1830, as their separate share of the benefits secured to the tribe under the treaty made in that year, on the ground that their rights are precisely analogous to those of the Cherokees and Creeks, who were similarly situated, and whose claims have been recognized by the government. The estimate of the amount due them is based upon the assumption that the western Choctaws constituted *one-thirteenth* of the entire tribe, rating the eastern Choctaws at 24,000, and the western at 2,000. The latter estimate is probably too large, although General Jackson stated, in 1820, that one-third of the whole tribe had removed west; but, on the other hand, Mr. McClellan, agent for the western Choctaws, represented their number in 1828-'29 at about one thousand. Whatever the number then west, it is entirely clear that, as those east were joint owners with them of the lands west,

so *they* were joint owners with those east of the lands east, and entitled, equally with them, either to reservations or to a commutation in money, as was expressly decided by the Senate in the parallel case of the Cherokees, and as was also decided by the treaty with the Creeks.

A claim is presented for \$166,666 66, growing out of a convention between the Choctaws and Chickasaws, ratified March 24, 1837, which provides that the Choctaws shall be paid \$500,000, "to be invested in some safe and secure stocks under the direction of the government." This stipulation was in part fulfilled by the transfer, on the 11th February, 1841, of five hundred Alabama bonds, of \$1,000 each; whereas the sum of \$500,000 in money was, at that time, as appears from a report of the Commissioner of Indian Affairs, dated October 28, 1840, equal to and would have purchased \$750,000 in bonds. The Choctaws ask for the difference between the market value of the bonds they received and the money that was promised them. They were certainly entitled to have such amount of the bonds in question as \$500,000 in money would purchase, for that was expressly the agreement.

The act of March 3, 1845, provided that the one-half of the scrip, deliverable on the Indians' arrival west, should not be delivered to them, but, instead thereof, the amount of the same should "carry an interest of five per cent.," which the United States thereby agreed to pay "annually to the reservees, under the treaty of 1830, respectively, or to their heirs and legal representatives forever."

The Indian Office decided that this interest did not commence to run until after the arrival of each Indian west. The amount of interest paid under this decision was less by the sum of \$150,989 70 than it would have been if computed from the date of the act of 1845. The Choctaws claim that it ought to have been so computed, and it seems to the committee that as the act provides that the sum "shall carry an interest of five per cent.," without any further definition of the time when such interest should commence, it ought, by the ordinary rules of law and construction, to have been held to commence from the date of the act; especially as the postponement of the payment of the scrip until after removal west was itself in contravention of the rights of the parties under the treaty. In equity it would run from the 24th of February, 1836, when, according to the treaty, the rights of the claimants to fee-simple titles became complete.

It is evident, from these facts, that the Choctaws are justly and equitably entitled to receive of the United States a large sum, in gross, for non-performance of the stipulations of the treaty of 1830.

The next question is, how much that sum should be? The precise sum, it may at once be said, it is now impossible to ascertain.

If we take first the claim for additional allowance to those who, failing to secure their reservations, received scrip in lieu thereof, we find that of the 1,585 families shown by the official records to have remained, 1,150, admitted to have done all that was required to entitle them to reservations, received none of their own lands, but scrip and money, after long delay, in lieu thereof. Their lands were sold for the sum of \$1,750,000, and that sum therefore was received by the treasury.

Under the laws enacted subsequent to the treaty it was impossible for an Indian to have his reservation allowed, unless he was clearly entitled, and had been wholly free from default or negligence. These 1,150 families lost their reservations, their homes, farms, and improvements altogether, and exclusively in consequence of the acts of omission or commission of the officers of the United States. They were therefore entitled, in justice, to a *full* and complete indemnity. Their lands, partly improved, and naturally selected by them for their superior advantages of soil and situation, were worth, probably, much more than \$1 25 per acre; perhaps, on an average, not less than five dollars, and much of it still more.

Evidently to affix an arbitrary, uniform price, and that the minimum price of public lands, on the lands and homesteads thus lost to the parties, and to compel them to take that minimum price or nothing, was no indemnity, even if the amount had been presently paid them in money. It certainly did not proceed upon the principle of ascertaining the true and real amount of their loss, and paying them that. If it was in any exceptional case really an indemnity, that result was of course accidental. That the United States chose to sell their lands for much less than their value, as it in no way lessened their loss, so it in no way set a limit to their right to indemnity.

For example: In one case the claimant "had a house and field in Patickfah, where he resided until four years after the treaty, when a white man (Waters) drove him off." His land was sold August 25, 1835. His claim was allowed in 1846 by the late Governor Marcy, who was then Secretary of War, and scrip was issued to him. It does not appear what he received for the scrip; but admitting that he realized \$1 25 in money for every acre, it was still no sufficient indemnity. What he was entitled to was the undisturbed possession of his land and the right to sell it to whom, when, and at such price as he pleased. To turn him out of doors by selling it as public land in 1835, to retain the proceeds of sale for eleven years, and then pay them over to him without any allowance for the delay or the use of the money, or for the value of his improvements, or that of the land over and above the sum for which it sold, was very far from doing complete justice.

By this mode of compensation, all claim was excluded for the value of the *improvements* of the parties, their clearings, buildings, orchards, and the like. Not a dollar was allowed for that; but only the minimum price of unimproved public lands. And no attempt was made to ascertain the *true* value of the lands themselves. Of course, it would at this remote day be utterly impracticable to ascertain the actual and real value of the improvements or lands which were the actual loss of the parties; and as to interest, the very magnitude of the item, exceeding, as it would in the aggregate, a million of dollars, would be likely to prove an insuperable bar to its allowance. If the lands and improvements of the reservees were worth, on an average, five dollars an acre, the difference between their value and their price at \$1 25 an acre was over five millions of dollars.

Similar difficulties occur in considering the losses in the sale of scrip. In strict justice, it should be remembered that this scrip was made

to serve a double purpose. It was used in compensation for land claims, and also as an inducement to emigrate to the Indian territory west, where most of it was delivered where it could not be located, and where, consequently, it was comparatively worthless. The Indian had either to sell it at a point remote from any market, or keep it as so much waste paper. Thus the service the scrip was required to perform as an aid to emigration lessened its value to the claimant. How far this cause operated in reducing the price below the regular market value, what that market value was, or how much the great body of the claimants really lost, are points which cannot now be determined. There is no doubt that the loss fairly chargeable to the government is considerable, but it would be impossible to fix the amount correctly.

The claims heretofore rejected for reservations under the same article of the treaty may perhaps be more easily disposed of. The objections to most of them arise from a provision in the act of 1842, requiring the claimant to show that he lived on his improvement the full term of five years after the treaty, unless actually dispossessed in consequence of the sale of his land before the close of the five years. In a large majority of these cases the alleged cause of rejection is that the improvements were voluntarily abandoned. There is ample proof, however, to show that most of the cases of "voluntary abandonment" were in a great degree, if not entirely, owing to the conduct of the emigrating agents of the government. A joint resolution was passed by the Senate in 1852 for the relief of the parties in such cases, but was so essentially modified in the House of Representatives as to destroy its intended effect.

The practical operation of the provision in question, in cases where the abandonment was not voluntary, is shown by comparing the case referred to as allowed in 1846 by Governor Marcy, with another of precisely the same character, adjudicated at the same time and rejected.

The two parties lived on adjoining sections. They were both heads of families, and had both signified to the agent their intention to remain. Both were dispossessed at the same time and by the same person, the only difference being that the dispossession entered the one tract at the land office and did not enter the other. Consequently the former case fell within the act of 1842, the latter did not.

It is manifest that if either of these parties were entitled under the treaty, they both were.

It would, probably, not be difficult to ascertain which of the rejected claims ought to be allowed and which ought not. But if any of these claims are admitted, the question arises, what is the proper measure of relief? The claimants are nearly all in the Indian country, west. Their lands have long since been sold and cannot be given back. To award scrip in the face of past experience would be absurd. If money is to be paid, how much?

Similar difficulties would be met with in attempting to fix the proper amount of indemnity under the other claims.

It is obvious that the operation of the 19th article was, contrary to the intention of both parties to the treaty, very unequal and unjust. One party who emigrated was as much entitled to have the benefit of, and pay for, his improvements as another. In regard to that it was

peculiarly the case, that equality alone could be equity. In consequence of a mutual error, the larger number received nothing for their improvements, and the United States profited by the error to a corresponding extent. They had devoted 437,200 acres of land to the use of compensating for such improvements; of which 127,040 acres only was used, leaving as profit to the United States 360,160 acres. It is equally impossible, in regard to these claims, as in regard to those under the 14th article, now to ascertain the actual value of the reservations provided for, embracing, as each did, the improvements and home of the parties; and the treaty giving them a fee simple with the power to sell.

Those Choctaws who have emigrated at their own expense are, unquestionably, entitled to reimbursement; but the government has always refused to examine their claims, and they consequently are not, and cannot now be, presented in such authentic shape as to admit of certainty and justice of adjudication.

The Choctaws who had emigrated west prior to the treaty of 1830 certainly retained in the eastern lands of the tribe an equal and common interest proportioned to their numbers; and that interest could not justly be taxed with any part of the expense of removing or subsisting those who subsequently removed. But it would be idle now to attempt to ascertain their number or the actual value in 1830 of their interest in those lands.

The moneys for which the 1,150 reservations were sold actually belonging to the reservees, the government, if it could be charged in equity, would be adjudged to have held those moneys in trust for them, and to be liable to pay interest, not from the date of the act of March 3, 1845, but from the time when the price of each reservation was received. If that act meant to give interest accordingly, from the time of receipt and not from its date, it would be utterly impracticable to establish the data for the calculation, because the reservations were not sold as wholes, or each at one time, but by the divisions and subdivisions of the public surveys.

The United States was to take the cattle of the Choctaws; and there is no doubt that on this score also they have a just and fair claim, but to what amount it is now wholly impossible to ascertain.

It being thus impossible to ascertain to how much the Choctaws would be entitled, on a fair and liberal settlement, for the damage and loss sustained by them, it seems to the committee that the only practicable mode of adjustment is to give them the net proceeds of their lands, not on the ground that the letter of the treaty entitles them to it, but that it is the only course by which justice can now be done them.

And while, on the one hand, to award to the tribe the net proceeds of their lands, would surely be no *more* than just to them, because, practically, no regard is paid to actual value by the United States in the sales of public lands; and undeniably the real market value of these lands, which the Indians might have realized, if protected in their possession, was far greater than the price for which they actually sold; on the other hand, the United States would neither have lost, paid, or expended anything, whatever, but would only have refunded

to the Choctaws the surplus remaining on hand of the proceeds of their own lands, after having repaid themselves every dollar expended for the benefit of the Choctaws ; and that after having had the use of this surplus for many years without interest, and when, according to the estimates of the General Land Office, it would really amount to little more than half of what might be recovered in a court of equity, if the case were one between individuals, as will appear by the comparative statement hereto appended.

The committee accordingly report the following resolutions, and recommend that they be adopted and made the award and judgment of the Senate upon the questions submitted by the treaty of 1855.

RESOLUTIONS.

Whereas the eleventh article of the treaty of June 22, 1855, with the Choctaw and Chickasaw Indians, provides that the following questions be submitted for decision to the Senate of the United States:

“First, whether the Choctaws are entitled to or shall be allowed the proceeds of the sale of the lands ceded by them to the United States by the treaty of September 27, 1830, deducting therefrom the costs of their survey and sale and all just and proper expenditures and payments under the provisions of said treaty, and if so what price per acre shall be allowed to the Choctaws for the lands remaining unsold in order that a final settlement with them may be promptly effected ; or

“Second, whether the Choctaws shall be allowed a gross sum, in further and full satisfaction of all their claims, national and individual, against the United State ; and, if so, how much.”

Resolved, That the Choctaws be allowed the proceeds of the sale of such lands as had been sold by the United States, on the — day of —, deducting therefrom the cost of survey and sale, and all proper expenditures and payments under said treaty, estimating all the reservations allowed and secured, or the scrip issued in lieu of reservations, at the rate of \$1 25 per acre ; and further, that it is the judgment of the Senate that the lands remaining unsold after said period are worth nothing, after deducting expenses of sale.

Resolved, That the Secretary of the Interior cause an account to be stated with the Choctaws, showing what amount is due them according to the above prescribed principles of settlement, and report the same to Congress.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 15, 1859.—Ordered to be printed.

Mr. WARD made the following

REPORT.

[To accompany Bill S. 512.]

The Committee on Post Offices and Post Roads, to whom was referred a bill to establish a line of mail steamers from New Orleans or Mobile to sundry ports therein mentioned on the Gulf of Mexico, have had the same under consideration, and a majority of said committee have authorized me to report a substitute therefor, and recommend its passage.

Your committee would further state that, at present, there is no direct postal communication between the United States and any of the Mexican ports, except an irregular one with Vera Cruz, twice a month, which is suspended during the summer months.

The government of Mexico, for the purpose of increasing the facilities of postal and commercial intercourse between the two countries, has entered into an exclusive contract with Mr. Carlos Butterfield, for the space of ten years, to transport the mails in steamers, weekly, between New Orleans or Mobile, and all of the above named ports, giving to the contractors an exemption from port charges for their vessels, and otherwise securing them in the enjoyment of the rights contracted for.

The compensation for this service by Mexico is fixed at the rate of one hundred and twenty thousand dollars (\$120,000) annually, based upon the supposition that the United States would contribute liberally towards establishing this desirable communication.

The general principle which this committee has adopted in recommending the formation of contracts for the transportation of the mails by ocean steamers has been either to pay a sum not greater than the amount of postages, or to call for competing bids; but in this case that principle cannot be applied, as the trade at present between this country and Mexico would not be a sufficient collateral inducement for any company to make regular trips for the postages alone. Although it is not properly a matter to be considered by your committee that the commerce between the two countries will be promoted by the establishment of a line of steamers through the agency of the

mail pay, yet such pay as ought to be allowed must depend in some degree upon the advantages which the ships carrying the mails can derive from commerce; and if it is important in any respect to establish a mail service to ports where commerce does not exist at present sufficient to sustain the line, then a greater sum must be paid than under other circumstances.

If the effect of the proposed line should result in the increase of commerce, the duties which will be paid on imports will very soon compensate the government for the increased mail pay; and should we, by a regular and ready communication with Mexico, succeed in restoring our commerce from its present dilapidated condition even to the point where it once stood, the duties received will much more than remunerate the government for the expenditure now advanced for mail service.

It will be seen from our apathy towards Mexico, and our indisposition to cultivate and extend our commercial intercourse with her, that very much of her trade, valuable to us, has been diverted to England and other countries, which we might easily have secured, and which may yet be reclaimed.

The total interchange of trade, including both imports and exports, between the United and Mexico in 1851, was reduced to about three millions of dollars, and at the present time it is probably less than two millions a year; although, when the United States forces held the port of Vera Cruz in 1848-'49, the imports then from the United States amounted in one year to over \$9,000,000, and as early as 1835 even a larger amount than the above was imported by Mexico from this country.

Your committee will further suggest that as Mexico has made the advance, and thereby has manifested a disposition to revive and increase our postal service and commercial intercourse, with the expectation that the United States will reciprocate, that she should be met in the same spirit in which the advance is made, which, if properly entered into and conducted, will open up a new channel of postal, commercial, and social intercourse between the two governments that will increase a revenue from postages alone to an amount exceeding the entire expense on the part of the United States government for mail service.

Your committee would further state that the sum allowed by this bill would only amount to \$2,500 for a round trip, or entire circuit of the Gulf, making an average distance of twenty-three hundred miles, touching at all the ports named.

In conclusion, your committee would most respectfully state that this whole subject-matter has been submitted to the Postmaster General for his consideration, and beg leave to annex hereto his able communication thereon.

POST OFFICE DEPARTMENT, *January 21, 1859.*

SIR: In reply to the inquiry made by the Committee on Post Offices and Post Roads, relative to the expediency of establishing a line of steamers between New Orleans or Mobile and all the principal ports

in the Gulf of Mexico, as set forth in the memorial of Carlos Butterfield, bearing date the 31st of December last, (1858,) I beg to submit the following statement:

Notwithstanding the proximity of Mexico, and the special interest of this government in everything that appertains to and that might facilitate the most friendly and enlarged intercourse between our own and the people of that republic, it is well known that for the last twenty years the commerce between the two countries has been greatly decreasing, and, in fact, has dwindled down to a comparatively insignificant amount; whereas with Great Britain and other European nations it has been steadily increasing. This fact, it may be presumed, is attributable almost entirely to the policy of the British government in protecting and supporting *regular* lines of mail steamers. Frequency, certainty, and regularity of intercourse between countries are the great life-springs of commerce. This it is which has given to Great Britain not only a commercial preponderance in the Mexican trade, but may, if it has not already done so, give her an equally significant political influence in the affairs of that country.

For many years past the United States have been endeavoring to enter into treaty stipulations, by which the bulk of the trade that now finds its way to Europe might be diverted to this country; a trade which with Great Britain alone, including imports and exports, amounts to from twenty-eight to thirty millions of dollars per annum; whereas with the United States it has not averaged eight millions per annum for the last twenty years.

Now, in order to divert this trade, as above stated, it appears to me that it can be effected in no other way so well as by the increase of commercial and postal facilities between the two countries. Establish such a line as the one in question, and the intercourse and interests of the people of Mexico and the United States will be so blended as greatly to promote future treaty arrangements, by which the general commercial interests of this country may be secured, and enable us to enjoy a commerce with that country within a short period of thirty or more millions of dollars per annum, instead of the paltry trade we now have.

The advantages of our geographical position, and the enterprise of our people who produce and manufacture every article of consumption suitable to the Mexican market, enable us, after the trade is once developed, to sell or exchange on terms more advantageous to Mexican consumers than can be possibly offered by European producers. Once accomplishing this object, and it is obvious that the considerable amounts of specie which now finds its way to Europe would be diverted to the United States.

By reference to the statistics of the two countries it will be seen that of the eight Mexican ports at which the steamers of the proposed line would touch, there are several which are almost entirely destitute of commercial and postal intercourse with the United States; ports from whence to our own, with the establishment of frequent and regular communication, would be shipped the productions of large countries, and many towns and cities containing from five to thirty thousand inhabitants, and through which would be received in ex-

change the productions and manufactures of the United States ; thus creating, as is believed, in a very short period a large and flourishing commerce between the two countries, which would necessarily augment our revenues far beyond the outlay necessary to put into successful operation the postal and commercial intercourse sought to be established by the proposed line of steamers.

Apart from the great commercial advantages to be derived from the establishment of this line, and placing it strictly in a postal point of view, it is obvious to any one acquainted with the political relations of the two countries that the want of postal facilities in what we should term the Mediterranean of the American continent has been long and seriously felt. In that connexion, I may refer you to the memorial, marked A, which, in the opinion of this department, presents a clear statement of all the facts embraced in the application.

And, in further elucidation of the subject, I would call the attention of the committee to the accompanying memorial of the merchants of Vera Cruz, marked B, addressed to the consul of the United States at that port, and transmitted to this department by him, with a communication of his views on the subject, marked C.

Notwithstanding the depletion of the Mexican treasury, that government, recognizing the importance of postal facilities between the two countries, and anxious to develop its commercial relations with the United States, came forward and contracted with a citizen of the United States for the establishment of a weekly line of steamers, touching at all the principal ports of the Gulf, free of port charges, and placing one-half of the line under the flag of the United States, undoubtedly contemplating a generous response on the part of this government for the accomplishment of a great international enterprise; involving, in my opinion, not only important postal and commercial, but also political interests.

If it is desirable to facilitate by treaty stipulations, and protect by armed squadrons, our trade with distant nations, whose people have no particular sympathies or affinities with our own, and for whom *we* are only concerned as to the dollars and cents involved, how much *more* important is it that with Mexico such a careful, liberal, enlightened, and wise policy should be adopted as will draw into the closest bonds of amity the people of the two countries, destined, perhaps, to claim as their own the history of each.

Upon all the facts involved in this application, I cannot withhold the expression of the opinion that great practical advantages will be gained to this country by acceding to some such arrangement as is suggested by the petitioner, and I therefore commend the subject to your favorable consideration as being well worthy the attention of Congress. It will be observed that the establishment of such a line would supersede the line from New Orleans to Vera Cruz, which has been kept up for many years, at a cost of about \$30,000 per annum.

Very respectfully, your obedient servant,

AARON V. BROWN.

Hon. D. L. YULEE,

Chairman Committee on Post Offices and Post Roads, Senate.

IN THE SENATE OF THE UNITED STATES:

FEBRUARY 16, 1859.—Ordered to be printed.

Mr. HALE made the following

REPORT.

[To accompany Bill S. 582.]

The Committee on Post Offices and Post Roads, to whom was referred the report of the Court of Claims adverse to the claim of Arthur Edwards and others, for compensation for carrying the through mails to and from various ports on Lake Erie during certain periods in the years 1849, 1850, 1851, 1852, and 1853, respectfully report :

The claimants allege that they were the managing owners of the steamboats Arrow, Baltimore, Southerner, John Owen, and Bay City, between the years 1849 and 1853, inclusive; that during that time their boats were employed by the persons having charge of the United States mails to transport the same to and from the following ports on Lake Erie, viz :

On steamer *Arrow*, daily, (Sundays excepted,) both ways, between Sandusky City and Detroit, from the 1st of March to the 1st of December, 1849; also from the 1st of March to the 1st of December, 1850; also from the 1st of March to the 1st of December, 1851; also from the 1st of March to the 1st of December, 1852; and on steamer *Bay State*, from the 1st of March to the 1st of December, 1853.

On steamer *John Owen*, between Toledo and Detroit, daily, from the 31st of March to the 30th of December, 1851; and on steamer *Arrow*, from the 30th of March to the 31st of December, 1843.

On steamer *Southerner*, between Detroit, Michigan, and Cleveland, Ohio, daily, from the 7th of March to the 21st of November, 1850; also from the 19th of March to the 21st of November, 1851. And on steamer *Baltimore*, from the 12th of April to the 21st of November, 1852.

That they transported both the through and local mails during the above mentioned periods, but have been paid for transporting the local mails only, at the rates allowed under the order of the Postmaster General of 21st March, 1849, instructing the postmasters at different points to "make up and forward mails daily between their respective offices in boats making the greatest expedition, at one cent each for letters, and half a cent each for newspapers, to be paid at the office to which the letters or newspapers are delivered;" notwithstanding the

through mails were transported at the request of the department officials, with the understanding that the claimants should be compensated therefor. That they applied to the Postmaster General for compensation for said service, but he has refused to make such compensation, although, as the claimants are informed and believe, it has actually been done in several other like cases.

That, whatever may have been the usage, the claimants received and carried said through mail at the request of the postmasters and special agents of the department, and have faithfully transported the same during the time above specified, and the government, having derived the benefits and advantages of such transportation, are bound to pay a reasonable and fair compensation therefor.

There is no doubt the alleged service was performed, as claimed, with the sanction of the Post Office Department and under the express orders of its officials. The proof is abundant and conclusive.

It is also clear and indisputable that the claimants have received no compensation for transporting said local and through mail beyond what was allowed for carrying the local mail alone, and the ground assumed by the department is that the amount allowed for the local mail was understood to be in full for the whole service.

No evidence appears to sustain this assumption of the department. On the contrary, the testimony of the postmasters and special agents upon that point shows that the captains of the claimants' boats uniformly demanded pay for transporting the through mail, as a separate service from the local mail, and of which demands the department was advised at the time.—(See testimony of A. S. Williams, postmaster at Detroit; Daniel M. Haskell, postmaster at Cleveland, and Captain S. J. Atwood, in abstract of testimony hereto annexed.)

The following testimony of A. C. Harris, special agent of the department, is unmistakable and conclusive that the claimants performed said service with the expectation of remuneration, besides what was allowed upon the local mails, and that otherwise they would not have performed it:

"A. C. Harris deposes that from July, 1850, to March, 1853, he was special agent of the Post Office Department, and during that period passed very often over the routes from Cleveland to Detroit, Sandusky to Detroit, and Toledo to Detroit, by steamboat. The captains (of the steamers) often objected to receiving the great through mails, saying that the postmasters (local) refused to pay them anything except for the local mails, and as they got nothing for it, they would not carry it, unless the witness would undertake to see them paid for the service. *He requested them to take the mail aboard, and assured them they would be paid for the service*; and, in so doing, he states that he acted under the direction of the Post Office Department."

The next question that presents itself is the ground upon which the Court of Claims rejected the claim for compensation for said service, and how far that decision affects the rights of the claimants to an equitable claim upon Congress.

It will be seen from the opinion of the Court of Claims, hereto annexed, that that tribunal declined to report a bill for the benefit of

the claimants, because the express contract testified to by A. C. Harris, the special agent of the department above referred to, made by him with the claimants, and authorized, as he swears, by the Post Office Department, does not appear by the testimony to have been expressly authorized by the Postmaster General himself. But the committee are of opinion that when an agent of the Post Office Department testifies that a contract made by him, within the fair scope of his agency, was sanctioned by the Post Office Department, it may fairly be inferred, in the absence of any testimony to the contrary, that it was authorized by the Postmaster General himself, the head of that department.

That the service was performed the Court had no doubt, but for any compensation beyond what the claimants received for the local mails "they must depend upon the discretion of Congress."

The *equitable rights* of the claimants to compensation for their services was, therefore, not denied, and the decision of the Court of Claims should not, in the opinion of the committee, prejudice the appeal to Congress for a just remuneration.

That the service which the claimants performed under the assurance and expectation of remuneration was beneficial to the department and useful to the public, and such as would have been incumbent upon the department to supply, aside from the local mail service, there can be no doubt.

It will be seen from the testimony of Mr. Harris (see abstract of testimony annexed) that the captains of the claimants' boats used every means within their power to facilitate the through mails, and that it often occurred that the mail could not be got to the boats on the arrival of the cars by the time of leaving, and in such cases the captains, at his request, delayed starting their boats from a half hour to an hour and a half, until the mails could be put on board. Every accommodation therefore seems to have been extended to the department by the claimants, and no more efficient or regular service could have been performed had they been regular contractors.

In view of all the facts in the case the committee believe that the claimants are justly entitled to a suitable recompense for their services.

In determining what that recompense should be, it may be proper to consider what proportion the through mails bore to the local, for which the claimants received compensation.

The number of letters and newspapers transported in the through mails could not be ascertained, as the mails were always transferred from the cars to the boats, and from the boats to the cars, without being opened. The only method of approximating to the number is by comparing the number of bags, size, and weight of the through mails with the number of bags, size, and weight of the local mails, as testified to by the different witnesses. The testimony upon that point varies in estimating the through mails to be from four to fifteen times larger than the local mails. One witness testifies that one through mail numbered eighty bags, another witness says he counted 128 bags in one through mail, and another witness swears that one through mail weighed upwards of eight tons. The average of the testimony

shows the amount of through mail to be from $6\frac{1}{2}$ to $7\frac{1}{2}$ times greater than the local mail.

The amount paid for carrying the local mail appears to have been a very moderate one, from the fact that it was for letters but one-third of the amount (*viz.*, three cents) to which the department was limited by law.

By computing the number of trips of the claimants' boats, during which they carried the mail, it appears that the average compensation received, (being for the whole time \$10,544 95,) would be less than \$3 75 per passage.

Calculating the through mail to be (at the average of the testimony) seven and five-eighth times larger than the local mail, at the ratio of compensation received, it would amount to \$28 60 per trip, which the committee believe should be paid to the claimants for said service. They report a bill for that purpose and recommend its passage.

The testimony on the subject of the relative amount of through and local mails is perfectly clear and satisfactory.

Full extracts of the testimony accompany this report.

IN THE COURT OF CLAIMS.

ARTHUR EDWARDS, JOHN OWEN, AND IRA DAVIS *vs.* THE UNITED STATES.

JUDGE BLACKFORD delivered the opinion of the Court.

The petition alleges that from 1849 to 1853 the claimants were employed by the persons having in charge the United States mails to transport the mails to and from various ports on Lake Erie, in steamboats, as hereinafter mentioned; that though there was no specific contract on the subject, it was understood that the claimants should receive a reasonable compensation for the service; that the claimants accordingly transported both the local and through mails in their steamboats, daily, as follows: Between Sandusky City and Detroit for certain specified periods in the years 1849, 1850, 1851, 1852, and 1853; between Cleveland and Detroit for certain specified periods in the years 1850, 1851, and 1852; and between Toledo and Detroit for certain specified periods in the years 1851 and 1853; that the claimants have been paid for the said transportation of the local mails, but that the Postmaster General has refused to allow them compensation for carrying the through mails as aforesaid; that those through mails were transported at the request of the agents of the government; and that the claimants are entitled to be paid for such service the sum of fifty thousand dollars.

The documentary evidence is substantially as follows:

By an order of the Postmaster General of the 21st of March, 1849, the postmasters at Cleveland, Sandusky, Toledo, and Detroit, were instructed to make up and forward mails daily between their respective offices in boats making the greatest expedition, at one cent each per

letter, and half a cent each per newspaper, to be paid at the office to which the letters and newspapers were delivered.

On the 6th of May, 1851, the First Assistant Postmaster General wrote to the postmasters at Toledo, Sandusky, and Cleveland, requiring them to report if they were or had been paying captains of steamboats on Lake Erie for letters, packages, and newspapers, made up as through mails, as well as for letters, &c., sent to their offices for delivery and distribution; and that if they had been or were then paying for through mails, they were requested to state under what instructions they did so; and, in making their report for 1849 and 1850, to state whether the captains of the boats were paid for through matter, and if so, how did they (the postmasters) go into the count.

To the letter just mentioned, the postmasters at Toledo and Cleveland answered that they had only paid for letters, packets, and newspapers sent to their offices for delivery and distribution. The postmaster at Sandusky answered that he had paid for through mails, but he does not state how much he had paid, nor does he refer to any instructions authorizing such payment.

Under an order of the Postmaster General of the 7th of June, 1851, the postmasters at Sandusky and Toledo were instructed that, under the order of the 21st of March, 1849, they would pay the one cent on letters and half a cent on papers for such letters and papers as were for delivery at their offices only, and one cent for each package of letters for other offices, in respect to which their offices were the proper separating offices. And, at the same time, the postmaster at Cleveland was instructed that, as a contract for carrying the mail between his office and Buffalo, New York, had been made, the order of the 21st of March, 1849, was rescinded, except in cases of boats delivering mails from Detroit and Toledo; the boats so delivering to be paid for no through matter.

Also, on the 7th of June, 1851, the First Assistant Postmaster General instructed the postmaster at Cleveland that, under the order of the 21st of March, 1849, he would thereafter pay the boats conveying the mails from Detroit, and all other points except from offices where there was a contract existing for the service, one cent for each letter and half a cent for each newspaper, which were for delivery at his office only; and that he would also pay one cent for each package of letters, and one-half cent for every package or bundle of newspapers for other offices, that is, such offices for which the matter is separated and assorted at his office.

There are several depositions taken, which are substantially as follows:

L. W. Beebe. He was deputy mail agent and messenger of the Post Office Department at Detroit, from 1849 to 1855, and attended to the receipt and delivery of the mails. He separated the local mails directed to the Detroit post office from the through mails destined to points beyond Detroit, delivering such local mails to the Detroit post office, and sending the through mails on, by cars and boats, towards their destination. The through mail was, on an average, five or six times larger than the local mail.

The Southerner commenced running in the fall of 1849, and continued running until the close of navigation, between Detroit and

Cleveland. She commenced running again in the spring of 1850 with the Baltimore, the two boats making daily trips between Detroit and Cleveland. They were both owned by Arthur Edwards, and carried the mail daily. In 1851, upon the opening of navigation, the Southerner commenced running on the same route in connexion with the St. Louis, going down one day and back the next. The St. Louis was owned by Captain Ward, and the Southerner by Arthur Edwards.

On the Sandusky and Detroit route, the Arrow, owned by Arthur Edwards, made daily trips in 1849, 1850, 1851, 1852, and part of 1853, when the Bay City took her place.

On the Toledo and Detroit route, the John Owen ran in the forepart of 1849, the whole of 1850, 1851, and 1852, and part of 1853, when her place was taken by the Arrow. During this time she carried the mails every other day, and was owned by Arthur Edwards. The boats on the Toledo line did not carry the mails all this time, but only during a portion of the years above mentioned. He was not positive as to the time.

A. C. Harris. From July, 1850, to March, 1853, he was a special agent of the Post Office Department, and, during that period, passed very often over the routes from Cleveland to Detroit, Sandusky to Detroit, and Toledo to Detroit, by steamboat. He thinks that the local mail was, on an average, not to exceed one-fifth of the through mail, and very often not more than one-eighth. The local mail is that which is destined to the post office at the end of the route, to be opened there. The through mail is that which is destined to points beyond such office.

On the Cleveland and Detroit route, the mails were carried by the steamers Southerner and Baltimore, during 1850 and 1851; by the steamers Arrow and Bay City, on the Sandusky and Detroit route, during his agency; between Toledo and Detroit, by the Arrow and Owen. The mails were put on the boats running over said routes by directions of the postmasters generally, and sometimes by the witness' direction. The captains often objected to receiving the great through mail, saying that the postmasters refused to pay them anything except for the local mails; and as (they) got nothing for it they would not carry it, unless the witness would undertake to see them paid. He requested them to take the mail aboard, and assured them that they would be paid for the service; and in so doing he states that he acted under the directions of the Post Office Department. It often occurred that the mail could not be got to the boat on the arrival of cars by the time of leaving. In such cases the witness often requested the captains to delay until the mails could be put aboard, and they did so, waiting sometimes from a half an hour to an hour and a half.

D. D. Beebe. He was clerk in the Cleveland post office in 1852, and thinks that the through mail carried on the steamers in that year was at least twenty times larger than the local mail.

James Welch. He was a clerk in the Cleveland post office in 1851 and 1852. The mails in those years were carried between Cleveland and Detroit by steamboats daily. The mail going east during those years consisted mainly of the through mails destined for Pittsburgh,

Baltimore, Washington, Columbus, and Cincinnati; and going west, of matter from those and other offices going to Chicago and other offices west; together with the local mail between Detroit and Cleveland post offices. He thinks it safe to say that the through mail carried over this route was, on an average, ten times as large as the local mail. He was in the habit of handling the mail in delivering it to the mail carrier, and in separating it on its arrival for opening the local mail for delivery.

L. A. Pierce. He was, in 1850 and 1851, master of the steamboat Southerner, running between Cleveland and Detroit. He ran the boat from the 17th of March, 1850, till the 2d of November following; and from the 19th of March, 1851, to the 20th of November following, carrying daily the through and local mails the two seasons. The local mail was made up here (Cleveland) and destined for Detroit, and *vice versa*. The through mail was destined for points beyond Detroit on one side, and Cleveland on the other. He thinks the through mail would average from six to eight times as much as the local mail; and that there were from eight to ten bags of through mail per day. Of the local mail, there was one bag of letters and one bag of papers. He received for carrying the mail about two hundred dollars for each season, and that for the local mail only.

P. Farley. During the seasons of navigation in 1850 and 1851, he carried the mail from the boats to the post office, and from the post office to the boats, daily; and thinks the mail was carried in those years on the steamboats Southerner and Baltimore, from Cleveland to Detroit, and from Detroit to Cleveland. He thinks that the local mail was not more than one-fourth as large as the through mail. The local mail was that which stopped at Cleveland and Detroit; the through mail was that which was destined for points beyond Cleveland on one side, and beyond Detroit on the other.

J. Nelson. During the lake navigation in 1851 and 1853, he was mail carrier at Toledo, and carried the mails from the cars and steamboats to the post office, and from the post office to the cars and boats. In 1851 the line between Toledo and Detroit was formed by the John Owen and the John Hallister, and in 1853 by the Arrow and the Dart. The boats usually made the trip to Detroit in one day and back the next; and for a short time in 1853 they made the trip both ways in one day. He thinks that the through mail in those years, when carried on the boats, was four times as large as the local.

T. F. Brodhead. He was postmaster at Detroit from the 1st of July, 1853, to the time of making his deposition. The steamer Bay City carried the mail between Detroit and Sandusky from said 1st of July to the 31st of December following. The mail from Toledo to Detroit was carried, for the same time, by the steamer Arrow, and it was understood that, at that time, those boats were owned by the claimants. For the transportation of the local mail on those steamers he usually paid the captains of the boats. The amount paid for said time was \$354 88. Between Sandusky and Detroit the through and local mails were about the same. Between Detroit and Cleveland the through mail, or mail for points beyond Cleveland, was four times greater than the local mail. Between Cleveland and Detroit the

through mail was one-fourth as large as the local mail. The mail service of said boats was satisfactorily performed. He paid for delivery of local mail at Detroit post office at the rate of one cent per letter, and one half cent for each newspaper. He also paid for packages received and going beyond his office one cent for each package, amounting to fifteen dollars and fifty-three cents for the two quarters ending the 31st of December, 1853.

S. F. Atwood. He was master of the steamboat Arrow in 1849, 1850, 1851, and 1852, and was master of the Bay City in 1853, owned by the claimants as managing owners. Between Detroit and Sandusky, and occasionally between Detroit and Cleveland, the Arrow generally ran; and the Bay City did the same in 1853. Before navigation opened to Buffalo, the witness used to run as far as the ice would permit beyond Cleveland. Whilst master of said boats, he carried the through and local mail. In said years, except 1853, he carried the through eastern mail before navigation opened to Buffalo, and generally made from three to seven trips, each time carrying the mail both ways, for which no compensation was received, except for delivery of the local mail at Detroit, and sometimes at Cleveland. The largest through mail, for which he received no compensation, was eighty full sized leather and canvas bags. The through mail, as near as he could estimate it, was three-fourths or four-fifths of the mail carried. The claimants were the managing owners of the boats Arrow and Bay City. He supposed that the carrying of the through mail on the Southern Michigan railroad commenced in 1853, as there was then a diminution of the through mail by steamboats. He often asked compensation for carrying the through mail, but never received it. The claimants did not receive it, for the captains of the boats only were authorized to receive and receipt for it.

L. W. Martin. He was clerk and steward of the steamboat Southerner in 1850, 1851, and 1852. That boat ran between Detroit and Cleveland in 1850 and 1851, and between Cleveland and Toledo in 1852. Whilst he was on that boat, she carried the through and local mails. The through mail was four or five times larger than the local mail. The boat carried the through mail, for which no compensation was received, to points below Cleveland before navigation was open to Buffalo. She made from three to six trips to such points. He said he could not state particularly the average amount of through mail carried generally, but one mail numbered one hundred and twenty-eight bags.

A. S. Williams. He was postmaster at Detroit in April, 1849, and until July 1, 1853. The Arrow, Bay City, Southerner, and the other boats mentioned in the claimant's petition, carried the mail from Detroit to the points named in the petition. They carried the through as well as the local mails. In May and September, 1849, he wrote to the Post Office Department, at Washington, advising it of claims made by steamboat captains, generally for compensation for carrying the through mails, expressing the opinion that the quantity of through mail was more than double that of the local mail delivered for distribution there, and saying that he thought his estimate would fall far short of the facts. The through mail increased very much

from that time till the fall of 1852. He thought the through mail in 1850, 1851, and 1852, was from three to four times greater than the local mail. The through mail embraced everything west of that State. He never paid anything for the transportation of the through mail by packet. He acted under the instructions in the office to his predecessor, dated March 26, 1849.

G. D. Baptiste. In 1849, 1851, and 1852, he was on the steamboats Arrow and Southerner together at different times. He was on the Southerner in 1849 and 1852, and on the Baltimore in 1851. Part of his duty was to take care of the mail bags on those boats. The through mail, while he was on the boats, was, at a low estimate, five times larger than the local mail. They once carried a mail, taken on at Erie and left at Toledo, which they estimated at about eight tons.

Lewis Allen. He was assistant postmaster at Detroit from the 1st of May, 1849, to the 1st of October, 1853. From his knowledge there of mails for Chicago and points west, he thought the through mails, brought by the steamboats, were three times larger than the local mail. The steamboats frequently brought through mails as well as local mails.

Daniel P. Bushnell. He was collector of customs at Detroit. Arthur Edwards had been managing owner of the Southerner from 1849. The Bay City was under the managing ownership of Ira Davis and John Owen, or Owen and Davis, from 1852. The Arrow had been in the name of Owen and Davis from 1850 to 1853, inclusive. The Baltimore was registered in 1851 in the name of Howard and Bronson. The John Owen was registered in 1845, and owned by Arthur Edwards and Ira Davis from 1845 to 1853, inclusive. The Southerner ran between Detroit and Cleveland; the Arrow between Detroit and Sandusky; the Baltimore between Detroit and Cleveland; the Bay City between Detroit and Sandusky; the John Owen ran between Detroit and Toledo in 1849, 1850, 1851, 1852, and 1853.

L. W. Martin. The claimants had the control of the steamers Baltimore, Arrow, Southerner, John Owen, and Bay City, from 1849 and 1853, inclusive, during such time as said boats were running, and were entitled to receive compensation for such service. The John Owen was owned by Edwards and Davis, and ran between Detroit and Toledo from the spring of 1849 to the fall of 1852, inclusive. The Southerner was owned and controlled by Arthur Edwards, and ran from Detroit and Buffalo, touching at intermediate ports; from Detroit to Cleveland in 1850 and 1851; between Cleveland and Toledo in 1852. The Baltimore was chartered by Edwards and Davis from the owners for the season of 1851, and ran between Detroit and Cleveland. The Arrow was owned by Edwards and Davis from 1849 to 1853, inclusive, and ran from 1849 to 1852 between Detroit and Sandusky, and, in 1853, between Detroit and Toledo. The Bay City was owned by Davis and Owen and Ward (Davis and Owen being the managing owners) in 1853, and ran between Detroit and Sandusky. The said boats carried the through and local mails between the different ports stated in said years during the season of navigation.

H. G. Voice. He was captain of the Baltimore, running between

Detroit and Cleveland during the navigation season of 1851, and carried the mail on that boat during that year on every trip. When there were six or eight bags of mail, he thought that not more than two of them would be the local mail.

S. F. Atwood. The Arrow and Bay City, mentioned in his previous deposition, commenced running as soon as the ice would permit in the spring, generally about the 20th of March, and ran till the ice stopped them in the fall, which was, on the average, about the 20th of December. They made daily trips over the route (between Sandusky and Detroit) twice each day down, and back every day, except Sunday, and except, also, from four to nine trips early in the spring, when they ran to Erie and Buffalo. The mail was carried every day twice over the route, or daily both ways during the season of navigation of those years (1849 to 1853.)

H. G. Voice. The mails, mentioned in his previous deposition, going west, consisted of those destined to Detroit, Chicago, and points west; and the mails going east generally consisted of matter marked for Cleveland, Columbus, Pittsburg, Baltimore, and other points south and east. The mails destined to and marked for Detroit and Cleveland, at each end of the route, he understood as local mails, and those going to points beyond those offices as through mails. In speaking of the bags in his previous deposition, he meant to express the proportion of the local and through mails. The through mail was four times larger than the local mail.

A. S. Johnson. In 1851 he was clerk of the Baltimore. She carried the mail between Detroit and Cleveland daily, commencing at the opening of navigation in the spring, and running till the close of navigation in the fall. He had the general supervision of the mail when brought aboard, and saw it loaded up, and, at the end of the route, properly delivered to the agent, who carried it to the post office. His recollection of it was, that the through mails destined to points beyond Detroit going west, and beyond Cleveland going east and south, were eight or ten times as much in bulk as the local.

Daniel M. Haskell. He was postmaster at Cleveland, Ohio, from May, 1849, to some time in April, 1853, and attended personally to the duties of the office during said time. The mail was carried between his office and Detroit by the steamers Baltimore and Southerner during 1850, and by the Southerner and St. Louis during 1851. During those years the mail was carried daily, Sundays excepted, both ways. The mail going west consisted of the local mail between his office and Detroit, and the great southern mail from Baltimore, Washington, Pittsburg, and other southern towns, destined to Detroit, Chicago, and other points west. Going east, it consisted of the mail from Chicago, Milwaukee, and other western towns, (also the local mail from Detroit,) destined to Pittsburg, Baltimore, Washington, and the country south and east of Cleveland. The local mail was but a small proportion of the whole mail carried. From his recollection of it, he should say it was not more than one-tenth of the whole bulk of mail passing over this route. His attention was frequently called to it by the captains of the boats calling on him for pay for the through mail, insisting that it was eight or ten times as much as what they

got pay for. He did not pay them for carrying the through mail or any part of it. He paid for carrying the local mail between Cleveland and Detroit at the rate of one cent for letters, and half a cent for papers delivered at his office, to the captains of the boats so bringing such mails. He had no means of estimating the through mail otherwise than as the local was estimated, at one cent per letter and half a cent for a newspaper, which he thinks was a reasonable price ; and he thinks it was worth the same price to carry the through mail as the local, according to its relative proportion. The boats above mentioned formed a line between Detroit and Cleveland, running in connexion with the railroads at those points, being the only boats on that line during said two years. He sent both the local and through mails over that route by said boats by the instructions of the Post Office Department.

The facts and the law of this case are, in our opinion, as follows :

On the 21st of March, 1849, the Postmaster General instructed the postmasters at the places mentioned in the petition "to make up and forward mails daily between their respective offices in boats," at one cent a letter, and half a cent a newspaper, payable where the letters and papers were delivered ; and on the 7th of June, 1851, he instructed the postmasters at Sandusky and Toledo to pay the one cent on letters and half cent on papers which were for delivery at their offices only, and one cent for each package of letters for other offices, in respect to which their offices were the proper separating offices. In consequence of those instructions, the claimants carried both the through and local mails in steamboats over the routes, and during the periods mentioned in the petition ; the through mails being much larger than the local mails. A report from the Post Office Department shows that the claimants were paid by the postmasters at Detroit, Cleveland, Sandusky, Toledo, and Monroe, 10,544 dollars and 95 cents for mail service in the years mentioned in the petition, under said instructions of March 21, 1849, and June 7, 1851, allowing one cent for each letter and half a cent for each newspaper. The claimants applied, in 1854, to the Post Office Department for an additional compensation of 25,180 dollars, but the application was refused. They have now applied to this Court for additional compensation, and have increased the demand so as to make it 50,000 dollars.

We have no doubt but that the promises made by the Postmaster General by the said orders of 1849 and 1851 for carrying the mails, whether through or local, or both, have been complied with. For the mails to be sent by the boats, and which were so sent, under said orders, the exact price was fixed by those orders, and the same has been regularly paid. Now, did the Postmaster General make any other contract with the claimants, or authorize any other to be made with them, than those expressed in said orders ? It is not proved to our satisfaction that he did. It is true there is a witness, Mr. Harris, a special mail agent, who says that the steamboat captains often objected to receive the through mails, saying that the postmasters refused to pay them except for the local mail ; that he requested them to take the mail, assuring them that they would be paid ; and he says that, in doing so, he acted under the directions of the Post Office Depart-

ment. The witness does not state the time when this conversation with the captains took place, nor does he set out the directions under which he says he acted. Neither does he say that the directions were given by the Postmaster General; he only says that they were of the Post Office Department. In all this there is too much uncertainty to satisfy us that the Postmaster General gave to the captains, through Mr. Harris, the assurance in question.

This assurance, given by Mr. Harris, was for a *quantum meruit*; that is, not for any particular price, but for what the service of carrying the through mails should be worth. The claimants have referred to an act of Congress that contemplates the giving of such an assurance by the Postmaster General. The 5th section of the act of March 3, 1825, authorizes the Postmaster General to have the mail carried in any steamboat * * * on such terms and conditions as shall be considered expedient; provided, that he does not pay more than three cents for each letter, and more than one half cent for each newspaper conveyed in such mail.—(4 Stat. at Large, 103.) The 14th section of the act of March 3, 1845, authorizes the Postmaster General to contract with the owners or commanders of any steamboat * * * for the transportation of the mail for any length of time or number of trips less than the time for which contracts for transporting the mail of the United States were then usually made under existing laws, and without the previous advertisements then required before entering into such contracts, whenever, in his opinion, the public interest and convenience would be promoted thereby; provided, that the price to be paid for such service should in no case be greater than the average rate paid for such service under the last preceding or then existing regular contract for transporting the mail upon the route he may so for a less time contract for the transportation of the mail upon.—(5 Stat. at Large, 737.) Those provisions have reference to contracts for a specific price, and not to general promises for what the service might be worth.

We have a report relative to this claim, furnished by Mr. Dundas, Second Assistant Postmaster General, in whose office the contracts and directions of the Postmaster General for the transportation of the mails are entered; and we think that report of itself shows that the Postmaster General gave no other directions respecting said transportation of the mails than the orders aforesaid of 1849 and 1851.

We cannot, therefore, say that Mr. Harris' testimony shows any engagement by the Postmaster General upon which the claimants can found this additional claim of 50,000 dollars.

The said report of the Second Assistant Postmaster General, among other things, says:

"During the years 1849, and 1850, and 1851, there were no regular steamboat contracts between Detroit, Cleveland, Toledo, and Sandusky. There were daily land routes which were intended for the great mails, though they appear to have been irregular, and not at all times sufficient for the service. A regular boat line commenced May 19, 1852, between Cleveland and Buffalo, and Buffalo and Detroit, (north shore,) which, no doubt, conveyed the through mails. The boats of Captain Edwards were only employed in common with many others,

not under contract, for auxiliary service, under the general instructions to postmasters to employ them and pay one cent a letter and half a cent a newspaper, estimated on what are called local mails; which pay was to be in full for all mails, as well through as local. The whole number of boats thus employed during the period embraced in the present claim appears to have been eighty-eight, and the aggregate amount paid them \$44,605 21, (including Captain Edwards' boats.) These all conveyed through mails, it is presumed, and all upon the same terms, and compensation they have received must have been regarded, by the department, in full of all their services."

The Postmaster General, Mr. Campbell, in a communication of the 3d of November, 1856, to the assistant solicitor of this Court, says:

"In answer to your inquiry as to the practice of the department relative to payments for conveying mails on the lakes, I have to state that, except where regular contracts exist, the pay is adjusted according to the number of letters and papers destined for the port of delivery, constituting the *local mails*, without reference to through mails conveyed at the same time.

"In some cases one cent has been allowed on each *package* of letters *not* for delivery, forming part of the *through* mails; but, with this exception, the parties always understood that the amount allowed for the local mails was to be in full for the *whole* service."

The employment of the claimants for carrying the mails as aforesaid was under the said orders of the Postmaster General of the 21st of March, 1849, and of the 7th of June, 1851; and for the services now sued for, which were performed under that employment, the claimants can be legally entitled to no other compensation than that which those orders authorized. That compensation has been paid to them by the government. They, no doubt, carried in their boats the large through mails, as well as the local mails, during the time the latter were carried by them as aforesaid. But for any compensation for their services beyond what they have received they must depend upon the discretion of Congress.

Our opinion is, that the claimants have no legal cause of action.

Abstract of the testimony in the case of Arthur Edwards et al. vs. The United States.

L. A. PIERCE, captain of the steamer Southerner, testifies as follows:

I was master of the steamer Southerner, running on Lake Erie, between the cities of Cleveland, Ohio, and Detroit, Michigan. I began running said boat as aforesaid the 17th day of March, 1850, and discontinued for the season the 21st day of November following.

The next season I commenced running said boat the 19th day of March, 1851, and discontinued the 20th of November following.

Said boats run daily as aforesaid, carrying the United States mail, through and local, the two seasons. I mean by the local mail, mail which was made up and destined for Detroit, and *vice versa*. By through mail I mean that which was destined for points and places beyond Detroit on the one side, and Cleveland on the other. I think the through mail would average from six to eight times as much as the local mail. I took care of the mail; it was especially entrusted to my care.

Questions by counsel for the government.

State how many bags of through mail were carried each trip.

Answer. I should judge from eight to ten bags per day.

State how many bags there were of local mail per day.

Answer. There was one bag of letters and one bag of papers.

Question. Did you receive pay for carrying this mail; and if so, how much, and for what portion of it?

Answer. I received about two hundred dollars each season, and that for the local mail only.

PATRICK FARLEY, the mail messenger at Cleveland, testifies as follows:

Question. What was your occupation during the season of navigation of 1850 and 1851?

Answer. I was then carrying the mail between the post office of this city and the boats running on Lake Erie. I superintended the carrying of the mail as aforesaid personally; was myself always present.

Question. How was the mail carried from Cleveland to Detroit, and from Detroit to Cleveland, during the year 1850?

Answer. I think it was carried on the steamers Southerner and Baltimore.

Question. State what boats carried it in 1851?

Answer. I think the same boats.

Question. State in what manner you discharged the duties of mail carrier during those seasons?

Answer. I received the mail on the arrival of the boats and carried

it to the post office, and carried the mail from the post office to the boats on their departure, daily, during those two seasons.

Question. State what proportion of the mail carried by these boats was local and what proportion was through mail?

Answer. The greater proportion was through mail. I think the local mail was not more than one-fourth as large as the through mail. By local mail I mean that which stopped at Cleveland and Detroit; and by through mail I mean that which is destined to points beyond Cleveland on one side and Detroit on the other.

S. T. ATWOOD says :

I was master of the steamboat Arrow in 1849, 1850, 1851, and 1852, and was master of the Bay City in 1853, owned by the claimants as managing owners.

The Arrow generally run between Detroit and Sandusky, and occasionally between Detroit and Cleveland, and the Bay City did the same in 1853.

Question. Did you, while master of these boats, carry the through and local mail?

Answer. I did.

Question. Did you carry the through eastern mail before navigation opened to Buffalo during the years mentioned; and if so, how many trips did you usually make?

Answer. I did in each year, except in 1853, and generally made from three to seven trips each time, carrying the mail both ways, for which no compensation was received, except for delivery of local mail at Detroit, and sometimes at Cleveland.

Question. What was the largest mail you carried of through mail, for which you received no compensation?

Answer. Eighty bags; the bags were full sized leather and canvas bags. The through mail was three-fourths or four-fifths of the mail carried.

Question. Did you receive any compensation for carrying the through mail, or did the owners?

Answer. I did not; often asked for it, but never received it. The claimants did not; for the captains of the boats were only authorized to receive it and receipt for it.

In his second examination, in answer to the question, What time did these boats commence running in the spring and what time did they lie up in the fall? he says:

They commenced running as soon as the ice would permit in the spring, generally about the 20th of March, and run until the ice stopped them in the fall; which was, on the average, about the 20th of December.

They made daily trips over the route twice each day—down and back every day except Sunday; and excepting also from four to seven early in the spring, when they run to Erie and Buffalo.

Question. How often was the United States mail carried over this route on the said boats during the period last mentioned?

Answer. It was carried every day twice over the route, or daily both ways, during the season of navigation of those years.

HENRY G. VORCE testifies as follows:

Question. Were you the captain of the steamer Baltimore, running between Detroit and Cleveland during the navigation season of 1851?

Answer. I was.

Question. Did you carry the United States mail on your boat during that year on every trip?

Answer. I did.

In his second examination, in answer to the question, What did this mail consist of? he says:

The mails going west consisted of mails destined to Detroit, Chicago, and points west; and the mails going east generally consisted of matter marked for Cleveland, Columbus, Pittsburg, Baltimore, and other points south and east.

The mails destined and marked for Detroit and Cleveland, at each end of the route, I understand as local mail; and mails going to points beyond those offices as through mails.

Question. Can you tell the average number of bags per trip you carried during this season?

Answer. I cannot recollect definitely. I recollect there were frequently as many as twenty bags, or more, and it often occurred there were less; but the average number I cannot state.

Question. How much larger do you mean to be understood was the through mail over this route than the local mail?

Answer. The through mail was four times larger than the local mail.

AUG. S. JOHNSON testifies as follows:

Question. What was your business in the year 1851?

Answer. I was clerk of the steamer Baltimore.

Question. Who had charge of the mails aboard of your boat?

Answer. I considered myself responsible for the proper care of the mail, and did have the general supervision of it; and when it was brought aboard I saw it was locked up, and at the end of the route properly delivered to the agent, who carried it to the post office. I often handled it myself, and saw to its being put into the mail room and locked up when it would hold it all.

Question. Do you remember what proportion of the mail so carried was local and what through mail?

Answer. The local mail was but a small proportion of the whole mail carried over this route. My recollection of it is, that the through mails, destined to points beyond Detroit going west, and beyond Cleveland going east and south, were eight or ten times as much in bulk as the local.

J. R. NELSON, mail messenger at Toledo, testifies as follows:

Question. What was your business during the season of lake navigation in the years 1851 and 1853?



Answer. Carrying the mail to and from the steamboats and post office in 1851; in 1853 I carried the mails to and from steamboats, railroad, and post office. I attended at the cars and steamboats with the necessary means of conveyance to take the mails, as they arrived, to the post office, and in turn took the mails from the post office to the cars and boats.

Question. In what manner was the mail carried between Toledo and Detroit during the season of lake navigation in the years 1851 and 1853?

Answer. By steamboats. I cannot tell what years particular boats ran. Upon examination I find that the steamers John Owen and John Hollister formed the line in 1851. In 1853 the line was composed of the Arrow and the Dart. The boats usually made the trip to Detroit in one day and back the next.

Question. What proportion of the mails carried on these boats during these years over this route was local and what through mails?

Answer. It is hard for me to tell how much local mail there was, but I should think the through mail, when carried on these boats, was four times as large as the local.

L. W. BEEBE testifies as follows:

Question. What was your business from September, 1849, to July, 1855, inclusive?

Answer. My occupation was that of baggage-master, at the Michigan Central depot, at Detroit, and depot mail agent and messenger of the post office department at that city. I carried all the mails that were carried, except the mail to Pontiac; and such as went by stages, from and to the post office, to and from the cars and steamboats, &c.

Question. In what manner did you attend to said business as deputy mail agent, and perform the duties of said office, during the time last mentioned?

Answer. I generally attended personally upon the arrival and departure of the several boats and cars running to and from Detroit, receiving and delivering said mails personally, and assorting and separating the local mails directed to the Detroit post office from the through mails destined to points beyond Detroit, and delivering such local mails to the Detroit post office, and sending the through mails on by cars and boats towards their destination. The local mail for the Detroit post office was delivered immediately to the post office, and the through mails were generally taken directly from boats to cars and from cars to boats.

Question. What proportion of the said mail matter coming to and passing through Detroit was local mail, and what through mail?

Answer. The through mail was five or six times larger than the local mail; that is to say, it was on an average five or six times larger, for at some times it was not so large, but at others a great deal larger.

Question. What boats, carrying the mails, ran between Cleveland and Detroit, Sandusky and Detroit, Toledo and Detroit, from the

years 1849 to 1854? How long did each boat run, and who was the reputed owner or owners?

Answer. The Southerner commenced running in the fall of 1849, and continued running until the close of navigation between Detroit and Cleveland; she commenced running again in the spring of 1850 with the Baltimore. The two boats made daily trips between Detroit and Cleveland. Both boats were owned by Arthur Edwards, and carried the mails daily. In 1851, upon the opening of navigation, the Southerner commenced running on the same route with the St. Louis, going down one day and back the next. The St. Louis was owned by Capt. Ward, and the Southerner by Capt. Edwards. On the Sandusky and Detroit route the Arrow ran, and made daily trips. She was owned by Arthur Edwards. This was during the years 1849, 1850, 1851, and 1852, and part of the year 1853, and which time the steamer Bay City took her place. On the Toledo and Detroit route the John Owen ran in part of 1849, the whole of 1850, 1851 and 1852, and part of 1853. During this time she carried the mails every other day. She was owned by Arthur Edwards. The boats on this line did not carry the mail all of this time, but only during a portion of the years above mentioned; I won't be positive as to the time.

A. C. HARRIS testifies and says: From July, 1850, to March, 1853, I was acting as a special agent of the Post Office Department.

Question. What were the duties of your office?

Answer. Attending to the transportation of the mails, and other duties assigned by the department.

Question. In what districts did your duties require your attention?

Answer. Mainly in Ohio and Michigan.

Question. In attending to the duties of your office did you often pass over the route from Cleveland to Detroit, Sandusky to Detroit, and Detroit to Toledo, by steamboat, during the period last mentioned, having the mails in charge?

Answer. I did pass very often over those routes during that period, and always gave more or less attention to the mails.

Question. What amount of the mail conveyed over these routes was through mail, and what local mail?

Answer. I think that the local mail was, on an average, not to exceed one-fifth of the through mail, and very often not more than one-eighth.

Question. What do you understand by the terms through and local mails.

Answer. The local mail is that which is destined to the post office at the end of the route, to be opened there. The through mail is that which is destined to points beyond such offices.

Question. How was the mail carried over the above mentioned routes during the period last mentioned?

Answer. On the Cleveland and Detroit route they were carried by the steamers Southerner and Baltimore during 1850 and 1851; by the steamers Arrow and Bay City on the Sandusky and Detroit route

during the time of my service as such agent; between Toledo and Detroit by the Arrow and Owen.

Question. By whose direction were those mails put aboard of the several boats running over the routes above mentioned?

Answer. By the direction of the postmasters generally, and sometimes by my direction.

Question. Under what circumstances, and by what authority, did you direct the mails to be carried by these boats?

Answer. The circumstances were that the captains often objected to receiving the great through mails, saying that the postmasters refused to pay them anything, except for the local mails, and as they got nothing for it they would not carry it, unless I would undertake to see them paid. I requested them to take the mail aboard, and assured them that they would be paid for the service, and in so doing I acted under the directions of the Post Office Department. It often occurred that the mail could not be got to the boat on the arrival of the cars by the time of leaving. In such cases I often requested the captains to delay until the mails could be put aboard, and they did so, waiting sometimes from a half hour to an hour and a half.

L. W. MARTIN testifies as follows:

Question. Were you in the employ of the claimants in the years 1850, 1851, and 1852?

Answer. I was.

Question. In what capacity?

Answer. As clerk and steward of the steamer Southerner.

Question. Between what points did the steamboat Southerner run?

Answer. She ran between Detroit and Cleveland in 1850 and 1851, and between Detroit and Toledo in 1852.

Question. Did she carry the through and local mails while you were on the boat?

Answer. She did.

Question. Was it part of your duty to receive and deliver the mails at the points at which the boats touched?

Answer. It was.

Question. What proportion should you think, from your observation, would the through mail bear to the local?

Answer. The through mail was four or five times larger than the local.

Question. Did your boat carry the through mail for which no compensation was received before navigation was open to Buffalo to points below Cleveland?

Answer. She did.

Question. How many trips did she make?

Answer. She made three to six.

Question. What was the average amount of through mail carried generally?

Answer. I can't state particularly, but one mail numbered 128 bags, which I counted myself.

Question. Were the claimants in this suit the managing owners of

the Baltimore, Arrow, Southerner, John Owen, and Bay City, between the years 1849 and 1853?

Answer. They had the control of those boats from 1849 to 1853 inclusive, during such time as they were running, and were the persons entitled to receive compensation for such service.

The John Owen was owned by Edwards and Davis, and ran between Detroit and Toledo from the spring of 1849 to the fall of 1852 inclusive.

The steamer Southerner was owned and controlled by Arthur Edwards, and ran from the ports of Detroit and Cleveland in 1850 and 1851.

The steamboat Baltimore was chartered by Edwards and Davis from the owners for the season of 1851, and ran between Detroit and Cleveland.

The steamboat Arrow was owned by Edwards and Davis from 1849 to 1853 inclusive, and ran in 1849 to 1852 between Detroit and Sandusky; in 1853 between Detroit and Toledo.

The Bay City was owned by Davis and Owen, and ran between Detroit and Sandusky in 1853.

Question. Did the aforesaid boats carry the through and local mails between the different ports stated, during the years aforesaid, during the season of navigation?

Answer. They did.

A. S. WILLIAMS testifies as follows:

Question. When were you first in possession of the post office at Detroit, and until when were you postmaster?

Answer. In April, 1849, and until July 1, 1853.

Question. What boats carried the mails from here to the points named in the petition of the claimants?

Answer. The Arrow, Bay City, Southerner, and other boats, mentioned in the petition of claimants.

Question. Did they carry the through mail as well as the local?

Answer. They did.

Question. From your knowledge of the business, what proportion did the through mails bear to the local mails?

Answer. By reference to my letter book I find I wrote the Post Office Department, at Washington, in May, 1849, and September, 1849, advising them of claims made by steamboat captains generally, for compensation for carrying through mails, and then expressed the opinion that the through mail was more than double the local mail delivered for distribution here, and that I thought my estimate would fall far short of the facts.

Question. Did the through mail increase much from that time till the fall of 1852?

Answer. It did.

Question. What proportion do you think the through mail bore to the local mail in 1850, 1851, and 1852?

Answer. I should think the through mail was from three to four

times greater than the local. The through mail embraced every thing of this State.

Question. Did you ever pay for the transportation of the through mail by packet?

Answer. I did not.

Question. At what time did you receive instructions from the department for paying for the mail brought by steamers?

Answer. I found, on taking possession of the office, in April, 1849, instructions to my predecessor, dated March 26, 1849, under which I acted.

GEORGE D. BAPTIST testified as follows:

In the years 1849, 1851, and 1852, I was on the steamboats Arrow and Southerner together at different times; I was on the Southerner in 1849 and 1852; on the Baltimore in 1851.

Question. Was it part of your duty to receive and take care of the mail bags on board those boats?

Answer. It was.

Question. From your knowledge, what proportion did the through mails bear to the local mails, averaging the whole time you were on these boats?

Answer. At a low estimate the through mail was five times larger than the local mail. We once carried a mail which we estimated about eight tons; we took it on at Erie and left it at Toledo.

D. D. BEBEE testifies:

In 1852 I resided at Cleveland, Ohio, and was clerk in the Cleveland post office. I think the through mail was at least twenty times larger than the local mail (during the year 1852.) The through mail was much more bulky than the local, and far more trouble to handle.

JAMES WELCH deposes:

I was clerk in the Cleveland post office during the years 1851 and 1852.

Question. What were your duties as such clerk?

Answer. They consisted mainly in distributing the mails and assorting and delivering the same to the mail carrier, who carried the mails between the steamboats and cars and the post office.

Question. How were the mails carried between Cleveland and Detroit during these years?

Answer. By steamboats running daily.

Question. What did the main bulk of the mail carried over that route during those years consist of?

Answer. The mail going east consisted mainly of the through mails, destined for Pittsburg, Baltimore, Washington, Columbus, Cincinnati; and going west, of matter from those and other offices going to Chicago and other offices west, together with the local mail between Detroit and Cleveland post offices.

Question. What was the relative amount of local and through mails carried over the said route from Cleveland to Detroit?

Answer. From my recollection of it, I think the through mail, so

carried over this route, was in bulk from ten to fifteen times as large as the local mail. I think it safe to say that, on an average, it was ten times as large as the local mail.

Question. What were your means of knowing the relative proportion between the local and through mails?

Answer. I was in the habit of handling the mails with my own hands, in delivering it to the mail carrier and in separating it on its arrival, for opening the local mails for delivery.

DANIEL M. HASSELL, deposes.

I was postmaster at Cleveland, Ohio, from May, 1849, to some time in April, 1853.

Question. Did you attend personally to the duties of your office during said time?

Answer. I did. It (the mail) was carried by the steamers Baltimore and Southerner during 1850, and the Southerner and St. Louis during 1851.

Question. How often was the mail carried over this route during these years, and what mail was so carried?

Answer. It was carried daily, Sundays excepted, both ways. The mail going west consisted of the local mail, between my office and Detroit, and the great southern mail from Baltimore, Washington, Pittsburg, and other southern towns, destined to Detroit, Chicago, and other points west. Going east, it consisted of the mail from Chicago, Milwaukee, and other western towns, (also the local mail from Detroit,) destined to Pittsburg, Baltimore, and Washington, and the country south and east of Cleveland.

Question. What proportion of this mail, passing over this route, was local and what through mail?

Answer. The local mail was but a small proportion of the whole mail carried. From my recollection of it, I should say it was not more than one-tenth of the whole bulk of mail passing over this route. My attention was frequently called to it by the captains of the boats calling on me to pay for the through mail, insisting that it was eight or ten times as much as what they got pay for.

Question. Did you pay them for carrying the through mail, or any part of it?

Answer. I did not. I paid for carrying the local mail between Cleveland and Detroit at the rate of one cent per letter, and half a cent for papers, delivered at my office, to the captains of the boats so bringing such mails.

Question. From your knowledge of the amount of mail passing over this route, what would be a reasonable compensation for carrying the great through mail upon the steamboats over this route?

Answer. I have no means of estimating the through mail otherwise than as the local was estimated, at one cent per letter, and half a cent for a newspaper, which I think was a reasonable price; and I think it was worth the same price to carry the through mail as the local, according to its relative proportion.

Question. Did the boats above mentioned run in connexion with the railroads terminating at Cleveland and Detroit?

Answer. They did form a line between Detroit and Cleveland, running in connexion with the railroads at those points, being the only boats on that line during said two years.

Question. Did you send both the local and through mails over that route by said boats by the instructions of the Post Office Department?

Answer. I did.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 17, 1859.—Ordered to be printed.

Mr. FESSENDEN made the following

REPORT.

(To accompany Bill S 584.)

The Committee on Finance, to whom was referred the petition of Smallwood, Earle & Co., with the accompanying papers, report:

That Heman J. Redfield, while collector of the customs at New York, imposed upon one Francis D. Beckwith, master of the barque "Colonel Ledyard," a fine of five hundred dollars for a violation of section 26 of the act of March 2, 1799, entitled "An act to regulate the collection of duties on imports and tonnage," in not producing a manifest of his cargo according to the provisions of said act. As it was contended by the agents and consignees of said vessel that this omission was accidental, and with no design to evade the requirements of law, the collector received the money and gave a receipt for it in the following terms:

"New York, 16 June, '57. Received from Francis D. Beckwith, master of barque "Colonel Ledyard," the sum of five hundred dollars in payment of a fine incurred by him for violation of section 26 of act of March 2, 1799, with the understanding that the same is to be retained in my possession until he shall have had an opportunity of applying to the Secretary of the Treasury for remission of same.

"HEMAN J. REDFIELD, *Collector.*"

This amount was paid and receipt taken by Messrs. Smallwood, Anderson & Co., consignees, and the receipt was transferred to them by Captain Beckwith, and the amount ordered to be paid to them by his endorsement in writing.

On the same day Smallwood, Anderson & Co. wrote to the Secretary of the Treasury stating the facts, and asking for a remission of said fine. On the 19th June, 1857, the Secretary replied, and referred them to the provisions of the act of Congress approved March 3, 1797. providing for the mitigation or remissions of certain for-

feitures, &c., as designating the course to be adopted by them in order to procure such remission.

On the 22d of the same June the consignees placed the matter in the hands of counsel, and proceedings were at once instituted in the district court, according to the provisions of said act, and notice thereof served on the proper parties. Owing, however, to the absence of a witness, and other difficulties and delays incident to legal proceedings, a decision was not had until October, 1857, when the court entered judgment, remitting the fine on payment of fees and costs, which were paid by the petitioners, and, together with counsel fees, amounted to \$138 20.

On applying, however, to Collector Schell for the money, they were informed that Collector Redfield had, on the 30th of June, 1857, divided the amount, according to the provisions of law—one-half thereof having been paid into the treasury of the United States. This, of course, put it out of the power of the Secretary to order a remission.

Under these circumstances, your committee are of opinion that so much of the fine as has been paid into the treasury should be refunded; and they accordingly report a bill to that effect for the relief of Smallwood, Earle & Co., who appear to be the only persons interested in the claim.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 17, 1859.—Ordered to be printed.

Mr. BIGLER submitted the following

REPORT.

The Committee on Commerce, to whom was referred the memorial of James H. Causten, attorney in fact of the legal representatives of Samuel Smith, James A. Buchanan and others, deceased, report as follows:

That it appears by the memorial and other papers before the committee that in September, 1814, the government sunk twenty-four vessels in the defence of the city of Baltimore, being the private property of the memorialists and others; that the owners of the vessels so sunken claimed damages, and that Congress did, by various laws dated in 1822, 1825, and 1830, provide for the compensation of said owners. The most of the claimants were paid under the act of the 26th of April, 1822, which made it the duty of the "Secretary of the Navy to ascertain such sums as shall be found just and reasonable" for the use of said vessels.

In accordance with this law the Secretary of the Navy proceeded to the settlement of the claims, and made awards setting forth the amount due to each claimant. So far as the committee can discover, no complaint was made against the findings of the Secretary of the Navy. The awards made by him seemed to be satisfactory, and payments were made accordingly.

But the owners, represented by James H. Causten, in the memorial before the committee, were, it seems, indebted to the government either as real parties or as sureties on duty bonds for various sums, maturing at different dates subsequent to 1814 and prior to 1822.

In paying the awards made to the several parties by the Secretary of the Navy, the Treasury Department deducted the amount due the government on the duty bonds, with interest up to the finding of the respective awards, and the interest so deducted is the special ground of complaint and the object of the memorial. It is claimed by the memorialists that although the sums due to the citizens whose property had been used by the government was not ascertained till 1822, it was actually due in 1814, when the property was used, and that, there-

fore, it was unjust to count the interest on the bonds held by the government, maturing subsequent to that date, and that the interest so retained, in all about \$15,000, should be refunded.

But your committee, after the fullest examination they have been able to give the subject, feel required to dissent from this opinion and report adversely to the prayer of the memorialist. They can see no necessary connexion between the claims of the owners of the sunken vessels against the government, and those of the government against individuals for non-payment of duty bonds, and the settlement of each was very properly left to stand on its own merits and on the law of the case. The circumstances that a number of those citizens bore both relation of debtor and creditor to the government could in no way affect either the law or the merits of any claim. It was no merit in the claim of a citizen for damages for a sunken vessel that he was a debtor to the government. The bonds held by the government were drawing interest from the date of their maturity, and all the parties must have known this. The awards of the Secretary of the Navy were for such sums as he thought just and reasonable, payable at the time they were made, without interest.

It is perceived, then, that if A, being the owner of an award of \$2,000, because he had been a debtor to the government for a like sum for four years, could cancel his obligation interest, he would receive \$480 more than B, the owner of a like interest in the sunken vessels. It could not have been the intention of the government to make this distinction; and so strongly has this view pressed itself upon the mind of the memorialist, Mr. Causten, that after presenting the claims for interest he seems forced to acknowledge that if the claim for interest is good for the one class of the claimant it must be good for the other; and he has accordingly set up a claim for all for interest, from September, 1814, the date at which the vessels were sunken, and thus present the whole question of the justice of the settlement, and the sufficiency of the payments already made.

There is no evidence before the committee as to the consideration entering into the awards made by the Secretary of the Navy, except that the law of 1822 required him to take certain proofs and estimates verified at Baltimore by Thorndike Chase and John Snyder; but they were fully authorized to conclude that the awards were as the law required, "just and reasonable," and that interest should not be paid. They accordingly offer the following resolution, to wit:

That the committee be discharged from the further consideration of the subject.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 18, 1859.—Ordered to be printed.

Mr. MASON made the following

REPORT.

[To accompany Bill S. 531.]

The Committee on Foreign Relations, to whom was referred the bill entitled "An act to allow to Edward K. Cooper and his assigns, being citizens of the United States, the exclusive right of occupying the island or key of Navassa, in the Caribbean sea, for the purpose of obtaining and selling guano therefrom," have had the same under consideration, and beg leave to report:

It is the object of the bill referred to this committee to declare, by act of Congress, the alleged title of Edward K. Cooper and his assigns, as citizens of the United States, to the exclusive right of occupying the island or key of "Navassa," in the Caribbean sea, for the purpose of obtaining and selling guano therefrom, pursuant to the provisions of "An act to authorize protection to be given to citizens of the United States who may discover deposits of guano," passed August 18, 1856.

Upon examination of that act, the committee are satisfied that it confers upon the President of the United States full authority, at his discretion, to give, by means of a possessory title, (under the restraints and limitations contained in the act,) to any citizen of the United States as a discoverer of deposits of guano on any island or islands not pertaining to or within the jurisdiction of a foreign country, or to the assigns of any such discoverer, the exclusive right to occupy and use the same.

The act is comprehensive in its details to enable the President fully to vest in the discoverer, or his assigns, all the privileges sought to be conferred on those named in the bill referred to this committee; and the committee therefore deem any special legislation in this or other like instances of alleged discoveries of guano unnecessary.

They further consider that it is competent to the President, under the act aforesaid, in such form or mode as he may prescribe, to vest in the discoverer, or his assigns, the rights secured to such under the act aforesaid.

The committee interpret the words "at the pleasure of Congress," in the second section of the act, to mean only that Congress may, at any time thereafter, revoke the rights thus vested.

The committee will add, that having sent the bill referred to them to the Department of State, it was returned to them along with the correspondence accompanying this report, from which it would appear that Edward K. Cooper and his assigns (the beneficiaries named in the bill) had already been admitted, by authority of the President, to all the rights and privileges upon the island or key of "Navassa," in the Caribbean sea, which are provided for in the act aforesaid, of the 18th August, 1856. The committee therefore report the bill back, with a recommendation that it be not passed, no further legislation being necessary, as before stated, to carry the object of the bill into effect.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 18, 1859 —Ordered to be printed.

Mr. POLK made the following

REPORT.

[To accompany Bill S. 587.]

The Committee on Foreign Relations, to whom was referred the memorial of E. George Squier, late chargé d'affaires of the United States to the republic of Guatemala, praying additional compensation for extraordinary services performed by him during his mission, have had the same under consideration, and now report :

The memorial sets forth that on the 2d of April, 1849, the memorialist was commissioned as chargé d'affaires of the United States to the republic of Guatemala, and also formally accredited to the republics of San Salvador, Nicaragua, Costa Rica, and Honduras, by separate letters to the ministers for foreign affairs of those governments. That the President also conferred upon him, in due form, full and separate powers to negotiate treaties with the governments of Guatemala, San Salvador, Nicaragua, Honduras, and Costa Rica. That with the first four of these republics he concluded important treaties, two of which were ratified by the Senate. That in carrying on correspondence and conducting negotiations with five different governments at the same time, he was compelled to employ two secretaries, for which no compensation was allowed him. That in collecting information with regard to the practicability of a ship canal between the two oceans, through Nicaragua, in accordance with his instructions, he necessarily traversed the State in every direction, and spent considerable sums of money in procuring proper instruments, and many weeks of time. That in June, 1850, he returned to the United States, on leave of absence from the Secretary of State, and while here a new administration came into power, and he was superseded on the 13th of September following. That, upon the settlement of his accounts at the department, he was allowed a salary only to the time of his leaving Central America, together with the usual infinit of a chargé d'affaires.

In consideration of these facts, the memorialist asks that he may be allowed a sum equal to an outfit of a *chargé d'affaires* to each of the republics to which he was commissioned, and with which he opened relations; and also for the salary accruing between the 28th June, the date of his leave, and the 13th of September, the date of his recall; and, in support of his claim, refers to allowances heretofore made in similar cases, viz: to Mr. Murray, in 1800; Mr. Madison, in 1804; Mr. Pinckney, in 1806; Messrs. Schenck and Pendleton, in 1852; and Mr. Kerr, in 1854.

It further appears that the Secretary of State, in a letter addressed to the Hon. D. E. Sickles, of the Committee on Foreign Affairs of the House of Representatives, dated April 12, 1858, in answer to a call for information on the subject, fully sustains the statements of the memorial in regard to the "value and importance of the services rendered by the memorialist at a most interesting juncture of our relations in that quarter, and especially in connexion with the negotiations which were going on here at the same time with Great Britain;" and after speaking of the energy and zeal which he had exhibited in the public service as being such as justly to entitle the memorialist to the leave of absence asked for, and granted by the department, the Secretary adds: "The precedents referred to in the memorial of Mr. Squier are pertinent to his application. The 'letters of credence' and 'full powers' bestowed upon the functionaries named were documents of precisely the same character as those hereinbefore mentioned as furnished to Mr. Squier."

In the various precedents cited by the memorialist and referred to by the Secretary there may have been peculiar circumstances which, in the judgment of Congress, justified their allowance. But, in the opinion of the committee, as a general rule, the purpose and object for which outfits are allowed to our diplomatic representatives is mainly to furnish the means for fitting up necessary establishments, suited to their grade, at the courts to which they are accredited, without having to draw upon either their salaries or private resources for that purpose. In this case it does not appear that any such establishments were necessarily fitted up. On the contrary, the very brief period (less than a year) during which the memorialist remained in Central America renders it more than probable that none such were required, except, perhaps, at the court where he chiefly resided whilst in that country.

In carrying out this view, the committee believe that a reasonable allowance should be made to cover the expenses of the memorialist in going from one court to another, together with clerk hire and other charges incident to the negotiation of the several treaties concluded by him with the republics of Central America. And in the absence of any certain data from which to ascertain the amount of such expenses, the committee regard the allowance of one additional outfit of four thousand five hundred dollars as amply sufficient for that purpose, and recommend it accordingly.

With reference to the claim for nine hundred and thirty-seven dollars for the balance of salary, alleged to be due for the interval

between the date of his departure from Central America, (28th June, 1850,) to the time of his recall, (13th September, 1850,) the committee are of opinion that the decision of this question rested properly with the department. If justified by law and usage in such cases, it would doubtless have been allowed in the settlement of his accounts, unless excluded by special considerations. Unadvised of the peculiar circumstances which may have caused the rejection of this item by the proper accounting officers in the settlement heretofore made, the committee are not disposed to disturb that settlement. They therefore report a bill in accordance with these views, and recommend its passage.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 18, 1859.—Ordered to be printed.

Mr. PUGH made the following .

REPORT .

[To accompany Bill S. 535.]

The Committee on Public Lands, to whom was referred the memorial of Elias Yulee, late receiver at Olympia, in Washington Territory, have had the same under consideration, and ask leave now to report :

When the land office at Olympia was first opened, in November, 1854, the number of applications under the act of September 27, 1850, and its amendments of February 14, 1853, and July 17, 1854, seems to have been from seven to eight hundred—a number so large as to impose on the register and the receiver the necessity of employing a clerk for about six months. This fact is proven by the certificates of the late chief justice and the late governor of Washington, as well as by two letters from the register to the General Land Office, dated January 27 and October 13, 1855, herewith submitted.

The act of September 27, 1850, provided for donations of public lands to such persons as should be residents of Oregon Territory, as then constituted, on the 1st of December thereafter, and also to such as should migrate thither within three years, subject to the condition of actual occupation during a term of five years. The act of February 14, 1853, authorized payment for the lands upon certain terms, in lieu of continuous occupation. The duty of receiving and examining applications under these two acts was devolved on the surveyor general as part of his regular service ; but the act of July 17, 1854, transferred it to the registers and the receivers of the land offices thereby established in Oregon and Washington. The sixth section, however, forbade any fee or emolument in such cases.—(Statutes at Large, volume 10, page 306.)

It appears to the committee that the condition of business in the land office at Olympia for the first six months was altogether extraordinary, and that the register and the receiver ought to be allowed for the expense of a clerk thus necessarily employed. Such was the relief extended by the act of June 5, 1858, to the officers at Oregon City and Winchester, in like circumstances.

The committee therefore report back the bill for the relief of Elias Yulee, late receiver of the land office in Washington Territory, with a substitute, and recommend its passage as amended.

[Extract.]

LAND OFFICE,
Olympia, W. T., January 27, 1855.

SIR: * * * * * * * *

As the notifications are now all made out in this office, my duties are very onerous, and some assistance is imperatively demanded. Within the last four weeks I have had, at times, a dozen men in my office together, some wishing information in regard to their claims, others to file notifications, &c.; and one man to be able to do all that is required of him at such times would have, certainly, to be a man of iron, and quite as ubiquitous as the renowned "John Smith." Unless some aid is soon afforded me, I shall be obliged to resign my office.

I have the honor to be, very respectfully, &c.,

H. C. MOSELEY,
Register of Washington Territory.

HON. JOHN WILSON.

WASHINGTON, June 3, 1858.

SIR: You have requested from me a statement with reference to the amount of duties performed by, and the necessity for the services of, Jared S. Hurd as a clerk in the office of public lands, Washington Territory.

I have no means of accurate knowledge on these points. I know Mr. Hurd to be an efficient, trustworthy man, and entirely competent to the discharge of every duty connected with the office. I know that during the first months of the opening of the land office I repeatedly saw Mr. Hurd actively engaged in the office, in company with the register, and from my own observation came to the conclusion that there must have been occupation for both.

I can also state that my impression is, that when the office was first opened at Olympia there was a great anxiety among the claimants under the donation act to get action taken upon their claims, and this would naturally cause a pressure of business upon your office.

I am, sir, with respect, your obedient servant,

EDWARD LANDER,
Chief Justice of Washington Territory.

ELIAS L. YULEE,

Late Receiver of Public Moneys, Land Office, Olympia.

When the land office was first opened in Olympia I know, from my personal observation, that there was a great press of business, and that Mr. Hurd, the clerk, was constantly engaged in the office assisting the register and receiver. He was an exceedingly competent man—just the person to employ temporarily in order to despatch the public business promptly and well. This press of business, and the employment of Mr. Hurd, I know of, personally, till the middle of May, when I left for the interior. But I have been informed, and indeed it is a matter of notoriety in our country, that Mr. Hurd was necessarily and constantly employed for the whole time for which clerk hire is asked.

ISAAC I. STEVENS.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 18, 1859.—Ordered to be printed.

Mr. SEBASTIAN made the following

REPORT.

[To accompany Bill S. 590.]

The Committee on Indian Affairs, to whom was referred the petition of Tilman Leak, beg leave to make the following report:

The petitioner represents that on the 7th day of May, 1856, he purchased from William Garrett, who was appointed agent to sell the "dead and abandoned Indian locations" for the State of Alabama, belonging to the Creek tribe of Indians, fractional sections six and seven, township 19, range 18, under an act of Congress passed in 1857, for which he paid the sum of \$679 57. He further states that the said fractional sections were sold as an entirety, and that on application at the proper department for confirmation of titles to said purchase and for a patent thereon, he was informed that the fractional section seven was already sold and patented to William A. Campbell on the 8th of September, 1835. The petitioner states that fractional section seven being thus patented and previously sold as an entirety, and that he purchased the same, and that by taking from the said fractional section seven it materially detracts from the value of the remainder of said land, particularly as on the said fractional section seven there is a ferry and privileges thereto belonging. He therefore prays that there be refunded to him the amount he paid for said land, \$679 57, with interest at eight per cent. added from the date of purchase, the 7th of May, 1856.

The testimony in this case shows that, under the treaty of March 24, 1832, with the Creek Indians, the fractions alluded to, a certain Creek Indian had those lands assigned to him, being the amount he was entitled to as a head of a family of that tribe; that it was sold, as stated by the petitioner, under the authority of the President of the United States, as public land, and patented to said Campbell, as stated by the petitioner, and that the said Campbell and those claiming under him have remained and are now in uninterrupted possession of the same. The testimony further shows that the sale of the said fractions to the petitioner was an entirety, and that the loss of fraction seven, which had been previously sold, as above stated, does

materially affect the value of said property. Your committee therefore recommend that the said sale made to the petitioner be rescinded, and the amount paid into the treasury of the United States by the petitioner be refunded to him, and report the accompanying bill for his relief.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 19, 1859.—Ordered to be printed.

Mr. DAVIS made the following

REPORT.

The Committee on Military Affairs and the Militia, to whom was referred the petition of Gomez & Mills, inventors and patentees of a new "safety fuse train," praying the government to purchase their right for the use of the same in the army and navy, having had the same under consideration, report:

For the reasons contained in the annexed communication from the Secretary of War, the committee ask to be discharged from the further consideration of the petition, and that it be laid on the table:

WAR DEPARTMENT, *February 16, 1859.*

SIR: I have the honor to state, in reply to your letter without date, respecting the proposed purchase from Gomez & Mills of the patent right to their "safety fuse train," that the purchase is, in my opinion, neither necessary nor advisable at present.

Very respectfully, your obedient servant,

JOHN B. FLOYD,
Secretary of War.

HON. JEFFERSON DAVIS,
Chairman of Committee on Military Affairs, Senate.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 19, 1859.—Ordered to be printed.

Mr. DAVIS made the following

REPORT.

The Committee on Military Affairs and the Militia, to whom was referred the petition of R. S. Simpson, assistant surgeon, United States army, having had the same under consideration, report:

The petitioner states that he rendered professional services at the United States Marine Hospital, at Key West, from about the 1st October to the 25th December, in 1856, at the request of the collector of the port, during the prevalence of the yellow fever on the island, and in the absence of any other physician.

It appears, however, that a Dr. Johnson was also employed under the same circumstances, and paid for his services by direction of the Treasury Department. Dr. Simpson's claim was disallowed, because he was at the same time an officer of the army, and the acts of 1839 and 1842 forbid such payments.

The committee consider that this officer's whole time belongs to the government, and if, under peculiar circumstances, he should discharge duties in a branch of the service different from that in which he is commissioned, it forms no foundation for a claim upon the government for extra pay, and they report that the prayer of the petitioner be not granted.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 19, 1859.—Ordered to be printed.

Mr. CLAY made the following

REPORT.

[To accompany Bill H. R. No. 259.]

The Committee on Pensions, to whom was referred House bill No. 259, entitled "An act granting pensions to the officers and soldiers of the war with Great Britain of 1812, and those engaged in Indian wars during that period," have had the same under consideration, and have instructed me to report:

That in reply to a letter addressed by the chairman of the committee to the Secretary of the Interior, inquiring the aggregate and annual sums of money that would be required to pay the pensions allowed by this bill, and the additional pension agents and clerks of the Pension Bureau rendered necessary by the passage of the bill, returned the following communication, prepared by the Commissioner of Pensions:

PENSION OFFICE, *January 27, 1859.*

SIR: I have the honor to return herewith the letter to you from the Committee on Pensions in the Senate, referred to me from the department on the 12th instant, enclosing a printed copy of House bill No. 259, entitled "An act granting pensions to the officers and soldiers of the war with Great Britain of 1812, and those engaged in Indian wars during that period," and asking—

1st. What sum will be required to be appropriated at this session of Congress?

2d. What average sum annually requisite, and for what period thereafter?

3d. What the aggregate sum necessary to extinguish all claims that may be preferred under the bill?

4th. What increase of clerks in the Pension Bureau and of pension agents, if any, will be required, and the compensation therefor?

In submitting an estimate of the probable amount required to execute the proposed bill, it is proper that I should say, in the outset,

that experience has proved that but little reliance can be placed on any such calculations. To prove this, it is sufficient to state, when the act of June 7, 1832, granting pensions to the soldiers of the war of the revolution, was under consideration in the House of Representatives, a very elaborate investigation was made by the committee having charge of the subject, but that their estimates did not reach to one-fourth the actual demand under the bill after it became a law. It was then supposed that the whole number of persons entitled to its benefits was 10,057, and that the amount of money required to pay the pensions under it would average \$907,608 for seven years. The facts are, that 33,414 claims have been admitted, and over \$18,000,000 expended, and yet there are about 200 surviving on the rolls of the several States.

In estimating the amount required for the new class of revolutionary widows (those married subsequent to the year 1800) provided for by the act of February 3, 1853, this office was not more fortunate in its calculations, notwithstanding the advantages derived from experience in the execution of similar laws. The estimate of the amount supposed to be required under that branch of the act up to June 30, 1854, was \$24,000, but that sum was found to be so entirely inadequate, that an additional appropriation of \$200,000 became necessary.

In the present case, the difficulties to be surmounted are not less than any of those hitherto encountered, and in some respects are certainly much greater. I have no reason, therefore, to hope that I shall approximate any nearer to accuracy than former calculations have done.

The bill in question provides for services in the war of 1812 with Great Britain, and Indian wars of that and former periods, and grants pensions for life to the surviving, and to the widows of deceased, officers, non-commissioned officers, musicians, and privates of the regular army, State troops, volunteers, or militia, of any State or Territory; and the officers, non-commissioned officers, and marines in the naval service, as follows, viz:

1st. To those engaged in battle, or who served twelve months or more, \$96 per annum.

2d. To those who served less than twelve, but as much as six months, \$75 per annum.

3d. To those who served less than six months, but as much as sixty days, \$50 per annum.

The necessary data for the required estimates are—

1st. The whole number of officers and men engaged, and the periods of service rendered by them respectively.

2d. The number who were engaged in actual battle.

3d. The probable number of soldiers and widows who still survive.

It has been found impracticable to ascertain the number of terms of service of the forces engaged in the Indian war of 1811, or those of previous years. It is not deemed very essential, however, for the reason that the troops in service in 1811 are no doubt comprehended in the returns for 1812, and will enter into the estimate for that war, and because the other Indian wars occurred at such remote periods that but few can survive.

It appears from the reports of the Adjutant General's Office, that the whole number of officers and men in the regular service during the war of 1812 cannot be given, and the nearest approximation to it is the numerical strength of the army at sundry irregular periods, viz:

In July, 1812, 6,686. In February, 1813, 19,036. In September, 1814, 38,186. In February, 1815, 33,424.

It must be obvious, that these facts will not enable us to determine what portion of these troops were in service for the periods of two, six, and twelve months respectively. As, however, the enlistments into the regular army at the commencement of the war were for five years, it is not unreasonable to suppose that the average length of service still to be performed by those who were in the army in July, 1812, as fully as much as twelve months.

The number which in 1813 had been added to the army, were of course enlisted for, and served over, one year; and if we average the period of enlistment of those who entered the army between February, 1813, and September, 1814, we shall find that they too had at least twelve months' service to perform before the termination of the war, and that the whole number of the regular army could not be less than 38,186.

Somewhat after the same manner we ascertain that the naval force engaged during the war will average 15,194, and the marine corps 2,652 for one year, making together 17,846. From reliable official data it appears that of the large militia force engaged during the war, the whole number of those who served twelve months or more was 7,147. Making the whole number who served for the longest period required by the bill 63,179. The number who served less than twelve months, but as much as six months, was 66,325. The number to have served less than six, but as much as three months, is 125,643. But there were 125,307, the precise duration of whose service is not known, only that it was between one and three months. It is reasonable, I think, to suppose, that one-third of these served as much as sixty days. On this hypothesis, the number who were in service less than six months, but as much as sixty days, was about 167,412.

There were also 17,200 whose duration of service is known to have been less than one month, and to which number we must add the remaining two-thirds of those who served between one and three months, making in all 230,738 whose service being less than sixty days, will not be entitled to the benefits of the proposed law unless they were engaged in battle.

From the facts derived from the operations under the various bounty land laws, and an examination of the most approved tables of mortality, it is supposed that of those who served in the war of 1812, three-eighths are now living. It is assumed, that of those who have since died, two-thirds were married men, and that of these one-half left widows.

From these data and hypothesis we conclude that there are 23,692 surviving soldiers and 4,936 widows, in all 28,628 persons who would be entitled to pensions of \$96 per annum, making \$2,748,288; 24,871, soldiers and 5,181 widows, making 30,052 persons at \$75 per annum,

making \$2,253,900; 62,779 soldiers and 13,079 widows, in all 75,858 persons at \$50 per annum, amounting to \$3,792,900, making the annual amount which will be required to pay these three of the four classes of pensions provided for by the bill, \$8,795,088. If the present ages of all these persons average sixty-eight years, (their expectation of life; that is, the average duration or mean length of all their lives is ten years,) the sum involved in the bill from the present time is, therefore, \$87,950,880. But the pensions are to commence from the 4th of March, 1857, and we must to this sum add the amount that would accrue from that period to the present, viz: \$15,391,404, making in all about \$103,342,284; about \$29,316,960 of which would be liable to be expended prior to the close of the ensuing fiscal year, and which would now have to be provided for, in addition to the expenses incident to the vast machinery necessary in the execution of so comprehensive laws.

The fourth class of beneficiaries consists of those who were engaged in battle; but it is utterly impossible to form any satisfactory estimate of their number. So far as those known or supposed to have served twelve months are concerned, it is immaterial whether they were in battle or not, because they would only be entitled to the same amount of pension; but there are 30,052 whose pensions are calculated in the foregoing estimate at \$75 each, and 75,858 whose pensions are calculated at \$50 each; and just so many as were engaged in battle will be entitled to \$21 and \$46 more.

There were also 230,738 not embraced in the foregoing estimate at all, because the duration of their service is supposed to have been less than sixty days, but who, if engaged in battle, will each be entitled to pensions for life, at the rate of \$96 per annum.

It is believed that a large number of the militia and volunteers who participated in the numerous engagements with the enemy during the war of 1812 were called into service on the sudden emergency of the occasion, and left it soon after, and, consequently, that this fourth class of pensioners, who would not otherwise come within the provisions of the bill, will be quite numerous, and that the amount required to pay them will greatly augment the large sum already reached. But should the proposed bill become a law, and its practical operation discover in this estimate similar errors to those known to have been committed by those who estimated the extent of the act of June 7, 1832, before its passage, the total amount above stated would be quadrupled; and what assurance does human reason or the experience of the past give that it will not be?

It will be observed that the effect of this bill is to continue the pensions that may be allowed to soldiers now living to their widows, when they shall hereafter become such, as well as to grant pensions to those who are now widows. It is impossible to estimate the additional amount which will ultimately have to be paid to this class; but, judging from the operation of the acts for the relief of widows of revolutionary soldiers, it will be by no means inconsiderable.

The present annual expenses of the several agencies is about \$24,000. The passage of the proposed bill would create so large a

number of pensioners throughout the several States and Territories as to demand the creation of many new agencies; and I should think the expense of maintaining them might, and probably would, go up to about \$200,000 per annum.

It is not easy to say to what extent the clerical force of this bureau could be increased with advantage in the event of the proposed bill becoming a law. I presume, however, it could be doubled; but the increase in the contingent expenses of the office would be in a large proportion. The present expense of the regular force of the office and contingencies is about \$135,000 per annum; the additional expenses consequent upon doubling the clerical force, including office rent, printing, &c., would not be less than \$150,000 per annum for some years to come.

On the whole, I should say, in answer to the specific question of the committee of the Senate, that—

1. The amount it would be necessary to appropriate at the present session would be about \$29,760,710.

2. That the average sum annually requisite thereafter would be about \$8,800,000 for ten years.

3. That the aggregate sum necessary to extinguish all claims that may be preferred under the bill will not be less than \$103,000,000.

4. That the increase in the clerical force of the office will be about double the present number, and the expense of such increase, including contingencies and the compensation of agents for paying pensions, about \$355,000 per annum.

I am, with great respect, your obedient servant,

GEO. C. WHITING,
Commissioner.

Hon. J. THOMPSON,
Secretary of the Interior.

The committee think that the commissioner's estimates are well sustained by the facts presented by him, upon which they are based, and that experience will probably prove them to be below the actual expenditure, should this bill become a law. They are fortified in this opinion by the past experience of the Pension Office—of which two striking examples are presented by the commissioner, and many others might be found—and by the further facts that his estimates do not embrace those engaged in the Indian wars, provided for in the bill, or the 230,738 soldiers who are supposed to have served less than sixty days, many of whom may have been in a battle, and thereby entitled to the largest amount of pension granted to any class by this bill. Neither does he make any allowance for pensions that may be fraudulently obtained, which, if equal in proportion to those thus obtained under former pension laws, would considerably increase his estimates.

But granting that his estimates fully equal the amount that would be required by the bill, it appears that the aggregate sum necessary to be appropriated at this session of Congress, to pay pensions accruing for three years, (beginning March 4, 1857, and ending March 4,

1860,) and to pay additional pension agents and clerks in the Pension Bureau, will be \$30,115,710; the average annual sum required for nine years thereafter will be \$9,155,000—making the aggregate for those nine years \$82,395,000; and the grand aggregate to be expended under this bill, for the sake of soldiers and their widows, will be \$112,510,710.

The question necessarily occurs to the mind of any one acquainted with the present condition of the treasury and resources of the government, how is this large amount of money to be raised? The indebtedness of the government now amounts to \$65,000,000; its revenues fall below its ordinary expenditures; and there is no substantial ground for the hope of realizing under the present tariff and from the public lands, during the next ten years, a surplus beyond the average ordinary expenditure of the last five years, sufficient to discharge a debt of \$112,510,710. The means to discharge the obligations assumed by this bill, if it become a law, must be derived from increased taxation, or from loans obtained on the credit of the government. The committee are not prepared to recommend a resort to either of those modes of providing money to be bestowed in gratuitous pensions. They trust that a large majority of those who might share this bounty would themselves oppose such an increase of taxation.

The committee cannot yield the slightest credence to the assertion, that we must either pension our volunteers or support a standing army large enough for any emergency. Our people are not, and it is devoutly hoped never will become, so depraved and so insensible to their country's honor, pride, and glory, as not to rally to her standard upon any appeal save that of avarice or cupidity. Indeed, they do not believe that there are many of the soldiers of the war of 1812 who demand, or desire, or stand in need of the bounty of the government. They did not engage in that war, like foreign mercenaries, for pay and pillage, but for the defence of their firesides, and the rights, the interests, and the honor of their country. Yet they have been already paid for their services, and have received more than was promised or they expected. They received more monthly pay, and far better rations, clothing, and equipment, than the soldiers of the revolution. All such soldiers, or their widows, have received liberal grants of the public lands; those disabled by wounds or diseases contracted in the line of military duty, and where they have died of such wounds or diseases, their widows have received pensions upon application and proof of their claims upon the government.

The committee cannot concede that all who volunteer in their country's service in war are entitled to pensions, or, in other words, that citizen soldiers have a right to claim the bounty of their government because they have defended it, and thereby discharged a duty demanded of them by self-love as well as patriotism, and by private as well as public honor. Such a sentiment tends to demoralize the soldier, to weaken the government, and to oppress the tax-payers with heavy exactions. In the opinion of the committee this bill rests only upon that sentiment; for it embraces not only the invalid and

the indigent, but the able-bodied and the rich; not only those who suffered for the sake of their country, but those who incurred no peril, and endured no privation or injury; not only those who faced and fought the enemy "like brave men, long and well," but those who, with shameful dismay, fled at the first sight of his standards and sound of his artillery. If the principles of this bill can be maintained, they see no reason for excluding all soldiers of all subsequent wars from the bounty of the government. Those who served in any of our Indian wars, or in the war with Mexico, have the same claims upon the public justice, generosity or charity. And the consequence of pensioning all who serve their country in time of war would be to render taxation so oppressive, that the people might well begin to consider whether the government was not more burdensome than beneficial, and the insults and injuries of foreign nations more tolerable than the cost of resistance and redress.

The committee cannot forbear to add, that the pension system has already grown far beyond the intentions or expectations of its original founders. It would be interesting and profitable to trace its gradual increase from small beginnings, and to show how the different and successive classes of public stipendiaries have been created; but it may suffice to say, that in the early days of the republic it was thought the government discharged its entire duty to its soldiers when it provided for those who were disabled in its service and could not provide for themselves. Only the invalid and the indigent were pensioned. Then those who were blessed with sound bodies and sufficient property to supply the necessities of life either disdained to ask pensions or were refused them. The persistent and too successful efforts, during the last quarter of this century, to enlarge the system so as to embrace all who have rendered any military service, and their widows and children, admonish us to retrace our steps rather than advance, and in future to confine the bounties of the government to those who, in its service, have lost their ability to take care of themselves, and are dependent upon public or private charity for their subsistence.

In conclusion, the committee think this bill inexpedient and unwise, whether considered in relation to those who must bear its burdens in taxation, or may enjoy its bounties in pensions. They have therefore, instructed me to report adversely, and to recommend that the Senate do not pass the bill.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 19, 1859.—Ordered to be printed.

Mr. DAVIS made the following

REPORT.

[To accompany Bill S. 487.]

The Committee on Military Affairs and the Militia, to whom were referred Senate bill No. 487, and the petition of citizens of Moline and Rock Island, Illinois, having had the same under consideration, report:

The bill provides for the sale of Rock Island, under the direction of the Commissioner of the General Land Office, in the same manner as if it were public land subject to such sale, and the petition prays for the passage of the act.

Rock Island is situated in the Mississippi river, within the limits of the State of Illinois, in fractional township 18 north, range 2 west, and fractional township 18 north, range 1 west of the fourth principal meridian. By the survey made in 1833, and approved in 1838, it was found to contain 896 $\frac{3}{4}$ acres, and is valued at five to six hundred dollars per acre. A military post, known as Fort Armstrong, was established and occupied on the island as early as 1815 or 1816, and it has ever since been regarded as a military reservation, under the direction and control of the War Department, whose agent is in charge of it to this day.

The committee, after carefully examining this subject, conclude that this island ought not to be sold, but should continue to be held for military purposes, for which it will, it is believed, be found to be very useful, particularly as an arsenal of construction and supply of materials for military transportation, and, in view of these facts and circumstances, ask to be discharged from the further consideration of the petition, and report the bill back to the Senate, with a recommendation that it do not pass.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 19, 1859.—Ordered to be printed.

Mr. TRUMBULL made the following

REPORT.

[To accompany Bill S. 595.]

The Committee on Patents and the Patent Office, to whom was referred the memorial of Frederick E. Sickels, the inventor of an improvement in the steam engine known as the "Sickels cut-off," asking that a law may be passed authorizing the Commissioner of Patents to re-examine his application for an extension of his patent for the term of seven years, submit the following report:

The memorialist was the inventor of an improvement in the steam engine known as the "Sickels cut-off," for which he obtained a patent on the 20th day of May, 1842, for the term of fourteen years. Previous to the expiration of the patent, on the 20th of May, 1856, the memorialist made an application to the Commissioner of Patents for an extension for seven years. Testimony was accordingly taken, and the case set for hearing before the commissioner for the 5th day of May, 1856.

The first section of the act, approved May 27, 1848, amending the law providing for the extension of patents, provides that the Commissioner shall refer the application "to the principal examiner having charge of the class of inventions to which such case belongs, who shall make a full report to said commissioner of the said case, and particularly whether the invention or improvement secured in the patent was new and patentable when patented," &c. The case now under consideration was duly referred to the examiner, who reported on the 3d day of May, two days before the final hearing by the commissioner, that the evidence was "neither full nor clear," and that, from a full reading of the voluminous testimony, it appeared that Mr. Sickels was "not the 'original and first inventor' of the drop valve and dash pot as covered by the claims allowed him in the patent," The examiner further reported that "of the other questions involved under an application for the extension of a patent, they can all, as applied to this application, be answered affirmatively. The invention of the drop valve cut-off is one of much merit, value, and usefulness.

It is evident from the papers filed on this application that Mr. Sickels has given earnest attention to the introduction of the invention."

The commissioner's decision against the extension is dated the 20th of May, 1856, the date of the expiration of the patent. In reviewing the case he refers to the act of 1848, already quoted, and the decision of the examiner that this invention "was not new and patentable at the time it was patented," and remarks that he is in doubt "whether it is proper for the commissioner to review such a decision of the examiner, inasmuch as the law devolves this duty entirely on the examiner, differing in this particular from other examinations, which are contemplated to be made *constructively* by the commissioner himself. At all events, I should feel unwilling to reverse the decision of the examiner in such cases, unless clearly satisfied of such decision being erroneous." The commissioner then proceeds to say: "I have, however, in the present case, undertaken to review such a decision. I see some reason to doubt the correctness of the decision of the examiner, but not sufficient to cause the scale to preponderate decidedly in the contrary direction. The testimony is conflicting and voluminous. The time which I have been enabled to bestow upon the case has not been sufficient to enable me to give it that complete analysis which would enable me to come to a conclusion entirely satisfactory to myself, and I feel, therefore, compelled, somewhat reluctantly, to refuse the extension."

It appears that three suits at law, involving the question of the originality of the invention, have been decided in favor of Mr. Sickels and his assignees, upon substantially the same evidence that was submitted to the Commissioner of Patents to sustain the application for an extension. Two of these decisions have been examined by the committee. In December, 1843, a suit was tried in the circuit court of the United States for the southern district of New York, before Judge Betts, being an action against John F. Rodman for an infringement of the Sickels patent. An issue in this case was that Mr. Sickels was not the "original inventor." Without recapitulating the evidence then presented, or the rules of law laid down by the court, it is sufficient to state that a verdict was rendered by the jury for the plaintiff, sustaining the originality and genuineness of the patent at all points. The same issue was decided in a more recent case, tried before Judge Grier, in September, 1856, in the circuit court of the United States for the district of New Jersey, and since the expiration of the patent, against the Gloucester Manufacturing Company for an infringement. Upon the question whether Frederick E. Sickels was the first and original inventor of the improved machine claimed in his patent of May 20, 1842, Judge Grier decided: "On this point, I must say that, after a careful examination of the very voluminous and contradictory testimony relating to it, I feel satisfied that Frederick E. Sickels is the first inventor of the improved machinery for effecting a cut-off in steam engines, as described in his patent." The uniform decisions of the courts in the only cases tried involving the question of originality have sustained the claim of Mr. Sickels as the *original inventor*.

As these decisions of the courts, made both before and after the report of the examiner in the Patent Office, are in conflict therewith, the committee are of opinion that there are grounds for supposing that the examiner committed an error, which would have been corrected by the Commissioner of Patents had he been clear as to his power to revise the opinion of the examiner, or time permitted for him to fully investigate the case. They therefore report a bill authorizing the Commissioner of Patents to rehear the application, and to grant an extension of seven years, if the claimant be entitled to it under the laws now in force governing renewals. The committee have so drawn the bill as, in their opinion, to protect the rights of those who may have adopted or used the invention since the expiration of the patent therefor.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 21, 1859.—Ordered to be printed.

Mr. DAVIS made the following

REPORT.

[To accompany Joint Resolution No. 81.]

The Committee on Public Buildings and Grounds, to whom was referred the resolution instructing them to inquire into the propriety of extending to the centre building the system of heating now applied to the wings, report :

That having had the same under consideration, and for reasons fully set forth in the accompanying letter of the engineer in charge of the Capitol extension, have reached the conclusion that it is proper and desirable to provide for heating the centre building in a manner similar to that adopted for the wings, and report a joint resolution to effect that object.

OFFICE OF THE CAPITOL EXTENSION,
February 19, 1859.

SIR: I return the resolution of January 11, 1859, directing the Committee on Public Buildings to inquire into the propriety of extending to the centre building of the Capitol the system of heating now applied to the wings, upon which you requested me to make a report.

The boiler vaults and main steam pipes of the wings of the Capitol have been constructed with a view to the extension of the same system of heating and ventilation to the old building.

Room has been provided for the additional boilers necessary for this purpose, and there are already proper branches or outlets to attach the steam mains to those which now heat the wings.

The first cost of such an extensive heating apparatus is considerable; once constructed, it is far superior in economy, comfort, cleanliness, and healthfulness, to the system of separate fires, with their attendant discomfort of dirt, smoky chimneys, and draughts.

Moreover, the fires being of anthracite coal, and confined to the

boiler vaults under the exterior terrace and to the two large chimneys already properly and safely constructed in the connecting corridors, the danger from the burning out of chimneys flues—a frequent occurrence in the centre building, and one which always gives just cause of anxiety for the safety of the roof—will cease.

The Library of Congress was destroyed by fire originating in one of these imperfect flues, and there are other cases in which wood work near the Senate chamber has caught fire from them.

I have endeavored to ascertain the cost of fuel for the old building, and am informed that the average cost of fuel for the House side of the old Capitol for the last five years has been..... \$2,600
 The annual appropriation for fuel for the library is..... 600
 The fuel for the Supreme Court costs from \$300 to \$400, say. 350
 Fuel for that part of the building occupied by the Senate has cost..... 1,925

Total annual cost of fuel for centre building..... 5,475
 A superintendent of furnaces receives..... \$1,200
 Assistant superintendent..... 600
 One laborer per annum, at..... 480

And on the Senate side:

One laborer during the session, say 180 days,
 at \$1 20 216
 2,496

What labor has been employed in carrying fuel on the House side I am not informed, but suppose that not less than \$500 is there devoted to this purpose..... 500

Total cost, say..... 8,471

This expenditure does not secure a comfortable warmth in the passages and corridors of the old building. The difference between their present condition and that of the new is very striking, and much in health is likely to result from the sudden chills felt in passing, for example, from the basement of the north wing into that of the old building.

The average daily consumption of coal this winter in heating the whole south wing, including the great quantity of air used in ventilating the representative chamber, has been three tons; and supposing that, through the rest of the year, one-third of this quantity is daily used, we should have, for the whole year, to heat this building from cellar to garret, about—

550 tons of coal, costing..... \$3,025
 Wood for kindling, say half a cord per day, 183 cords, at \$4 per cord..... 732

Cost of fuel per annum for south wing..... 3,757

Which is \$1,700 less than the average annual expenditure for fuel for the centre building, while it keeps the whole building, from cellar to garret, throughout the year, both warm and dry.

The boilers, being placed in the boiler vaults already constructed, could be attended to by the same set of persons now employed.

There would be one more engine and fan, to run during the day an average of ten hours during the winter, and to attend to this an additional engine driver would be needed. His wages should be \$2 per day. For this sum there is no difficulty in employing perfectly competent men.

Plan.

The central portion of the building is	168' x 116' x 60'	1,170,000
South wing.....	122 x 90 x 60	659,000
North wing.....	122 x 90 x 60	659,000
West wing.....	167 x 76 x 60	1,015,400
Cubic feet..		3,503,400
Deduct for walls, arches, and floors, one-fifth.....		700,700
Total space to be warmed—cubic feet.....		2,802,700

The building is old, and the doors and windows are not tight; the walls, however, are thick, and once thoroughly warmed they will not waste much heat by conduction. Upon the whole, I consider that one square foot of heating surface to every 100 cubic feet of space to be heated will be sufficient, and will be needed $28,000 \frac{2,802,700}{100} = 28,000$ square feet of heating surface, which will be supplied by 84,000 lineal feet of 1-inch wrought iron welded pipe.

The rotundo, the crypt under it, and (for its present uses) the old representative chamber, are very large apartments, requiring, from their great size, in comparison with the number of persons occupying them at any one time, no special provision for ventilation.

They will be most economically and comfortably warmed by coils of steam pipes placed within the rooms themselves, and acting both by direct radiation and conduction of heat.

A square foot of heating surface is twice as efficient in warming a given space in this way as when applied to warm the air before its admission to an apartment.

In this latter case a great part of the radiant heat is unavailable and is lost.

The committee rooms, corridors, Supreme Court room, old Senate chamber, library, &c., should be ventilated and heated by warm air heated by coils of steam pipe in the cellars, and driven into the rooms by a fan of 16 feet diameter, and an engine of 13-inch cylinder, 27-inch stroke. This fan and engine should be similar in construction to that now used to ventilate the Hall of Representatives, with such slight modifications in the construction of the fan shaft resulting from greater experience in their construction.

The excavation for air ducts in the cellars of the old building will be expensive, and a good deal of cutting will be necessary to provide flues, although the flues already constructed in the building will afford great facilities for this purpose.

While this work is going on, the partition wall dividing the rooms formerly occupied by the Senate Committees on Military Affairs and on

Indian Affairs should be removed, so as to throw these two rooms into one, to be occupied as a court room by the Court of Claims.

The furnaces under the library would be removed, and coils of pipes heated from the boilers in the boiler vaults substituted.

These coils should be placed in the rooms of the sub-basement of the west wing, under the library.

Two boilers, similar in size and construction to those now used in the wings, will be sufficient, with those already there, to supply the steam necessary for heating the whole building.

A slight change in the plan of these boilers, by the addition of a water space four inches wide, dividing the fire-box into two, will improve their evaporating power and conduce to still further economy of fuel.

Considerable experience in these constructions enables me to make an estimate which I am confident, if the work is placed in good hands, will cover all expenses, and accomplish the object in the best and most durable manner. It is as follows:

84,000 feet of one-inch steam pipe in coils, including return bends, valve branch T's, &c., at 30 cents.....	\$25,200
2,500 feet of main flow and return pipes, at \$1 25.....	3,125
800 feet of branch flow and return pipes, at 60 cents.....	480
2 boilers complete, at \$2,700.....	5,400
1 fan, 16 feet diameter, and engine.....	3,600
Fan room.....	1,000
30 coil chambers, at \$1 50.....	4,500
Main air duct.....	7,000
Cutting flues in walls.....	7,000
200 registers, at \$15.....	3,000
Steam traps.....	1,000
Engineering, drawings, superintendence, foremen of pipe work and masonry, &c.....	6,000
Contingencies	6,695
Total cost.....	74,000

The work should be committed to one who understands it, and who has some regard for his reputation as a constructor as well as for making money.

In proper hands the work will be successful, and will give entire satisfaction. It is a speciality, and few understand the principles upon which such work is successfully accomplished.

To fit up the rooms for the Court of Claims, and make the necessary alterations, will cost not less than \$5,000; it being understood that they are already provided with furniture, and that the changes in the mode of heating will be paid for from the appropriation to be made for heating the centre building.

I have the honor to be, very respectfully, your obedient servant,

M. C. MEIGS,

Captain of Engineers, in charge of Capitol Extension, &c.

Hon. JEFFERSON DAVIS,

United States Senate.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 23, 1859.—Ordered to be printed.

Mr. DAVIS submitted the following

R E P O R T .

The Committee on Military Affairs and the Militia, to whom was referred the resolution of the Senate "to inquire into the allegations of fraud in the proposed purchase of a site for fortifications upon the north side of the bay of San Francisco, having had the same under examination and consideration, report:

That they find, from all the evidence adduced, record and oral, that the agents of the government are exempt from blame; that they were not involved in any allegation of fraud; and herewith submit the evidence to the Senate, and ask to be discharged from the further consideration of the subject.

VIEWS OF THE MINORITY:

Mr. Broderick, on the part of the minority of the Committee on Military Affairs and the Militia, to whom was referred the resolution of the Senate "to inquire into the allegation of fraud in the proposed purchase of a site for fortifications upon the north side of the bay of San Francisco," submitted their views as follows:

Prior to the year 1852 the United States government made claim of title to a tract of land, for the purpose of erecting military fortifications thereon, situate on the north side of the bay of San Francisco, known as "Lime Point," believing that the title never passed from the Mexican government to individuals, and, consequently, after the cession of California to the United States, it became the property of the government. Some time after the United States had so made claim of title, a gentleman by the name of Richardson came forward and had his claim to said tract submitted to, first, the United States land commission, and afterwards to the United States district court, before both of which tribunals it was confirmed, and, April 2, 1857, "in pursuance of directions from the Hon. C. Cushing, Attorney General, further appeal was vacated, and the decree of the district court, confirming the claim, was ordered to stand as the final decree." On the 3d day of March, 1857, the Hon. John B. Weller, from the Committee on Military Affairs in the United States Senate, offered the following amendment to the fortification bill:

"To purchase a site and construct additional defences for San Francisco, \$300,000."

Which amendment was agreed to.

Knowing that the site had been already selected by officers of the United States government as a desirable one for military fortifications, it soon became an object sought after by speculators, and eventually got into the hands of one S. R. Throckmorton, a dealer in real estate, in San Francisco.

The government, in order to carry out the amendment of Mr. Weller, commenced negotiations with Throckmorton for the purchase of a tract represented by the owner to contain, at his lowest estimate, twenty-three hundred acres, and for which two hundred thousand dollars were demanded, being \$86 95 per acre. This being considered a large price for land of such a quality, the purchase was not made, and upon subsequent examination the tract in question was found to contain but seventeen hundred acres, or thereabouts. Supposing that the great difference in the quantity of land would make a corresponding one in the price, negotiations were again opened, but, notwithstanding the fact that six hundred acres, at \$86 95 per acre, would amount to \$51,970 no deduction would be made on the part of the owner.

With this deficiency in land the government still proposed to purchase at the full sum of two hundred thousand dollars, when a statement was made in the Senate that the price was exorbitant, and an evident desire evinced on the part of the owner, or reputed owner, to extort money from the government.

This produced the following action on the part of the Senate:

"IN THE SENATE OF THE UNITED STATES,
"January 31, 1859.

"On motion by Mr. Gwin,

"Resolved, That the Committee on Military Affairs be instructed to inquire into the allegations of fraud in the proposed purchase of a site for fortifications on the north side of the bay of San Francisco, and that said committee be instructed to report at the present session."

Under the foregoing instructions to your committee, the following inquiries assume a high degree of importance:

1st. What is the actual intrinsic value of the tract in question?

2d. Is the government justified in purchasing property at a price far beyond its actual value by reason of her necessities?

3d. Is there any evidence to induce the belief that an effort is being made to constrain the government to purchase the "Lime Point" tract at a price far beyond its real worth, or what could be realized from the sale of it to any other purchaser?

In discussing the first point raised, we would state that it was impossible to procure witnesses from California who would know the value of the tract, but your committee was obliged to rely upon such testimony as was produced by an agent of the owner, who was in Washington endeavoring to effect a sale, or such as came forward voluntarily; but the testimony taken will be quite sufficient to satisfy the mind that the price asked is exorbitant.

The testimony of the Hon. J. C. McKibbin, Messrs. McKee, Fish, and Sanders, is conclusive upon the question of value.

The first named, who has been upon the property, and speaks from actual observation, says that it is worth little or nothing for agricultural purposes or country residences; that its climate is unpleasant; that it is difficult of access, and worth comparatively nothing, except for military purposes; that none of the property has ever been under cultivation; that the best agricultural lands in California are not worth more than thirty or forty dollars per acre, and this property is not worth more than five dollars per acre.

Mr. McKee, who has been upon the tract, says, although unable to state what its market value is, it would sell for four or five dollars per acre for agricultural purposes; that property has fallen there since 1854; that there are prevailing winds there in the summer; that agricultural lands in California are worth forty-five or fifty dollars per acre when not on the bay, and that Mr. Richardson selected this in preference to other land, as being valuable by its position, and it has always been so considered in view of the necessities of the government.

Mr. Fish says that about six hundred acres is good land for agricultural purposes, and, in good times, would sell for thirty dollars per acre, but the greater portion of it is hilly and rough, and that the portion outside of the six hundred acres is entirely valueless in an agricultural view.

Mr. Sanders says the land is broken and high; that the tract is accessible but in a few places, on account of its abrupt and steep banks; that it is not easy of cultivation as other lands, and no attempts were ever made to cultivate it. Cannot state its value, as that depends upon circumstances.

But it appears that Colonel De Russy, of the engineers, and Mr. Della Torre, United States district attorney, who were in the employ of the government, on the spot, and acquainted with the tract, arrived at the same conclusion as the witnesses we have named ; for the former, in a letter of November 3, 1855, addressed to Brigadier General Totten, chief engineer of the United States, says :

"There are some few vaileys on the tract which, in the course of time, might be disposed of for grazing and agricultural purposes, but they, I apprehend, will at no time sell for as much as he asks per acre for the entire reserve."

And again :

"The price, however, for the whole tract appears to me too high to induce the government to purchase."

The latter, in a letter of July 3, 1857, addressed to the Secretary of War, uses this expression :

"And, in fact, the whole tract is of small value, except so far as the necessity of the government may give it value, it being mostly barren rock."

This same officer, in a letter to the Secretary of War of July 20, 1857, says :

"I am still of opinion that the land is of small value, apart from the necessity of government."

These opinions did not escape observation at Washington, for they are referred to by Captain H. G. Wright, of the engineers, in a letter addressed by him to the Secretary of War, July 10, 1858.

This evidence, regarded in the most favorable light for the vendor, fixes the value of the property at a point far below that which the government proposed to pay, and is sufficient to satisfy any one that the tract is neither fit for country residences nor agricultural purposes, and is only saleable as a site for military fortifications, and that the present and prior owners have so regarded it.

To answer the second inquiry propounded in the affirmative, is to admit that an individual, fortunate enough to acquire the title to realty required by the government, is at liberty to fix, demand, and compel the payment of his own price, and that the government, under such circumstances, is entirely at the mercy of the vendor—a proposition that we cannot subscribe to, inasmuch as it is in contravention of all laws, national and State, enacted for the condemnation of lands for government uses, and which would give to individuals or combinations full and entire control over the public treasury. Rather than submit to an imposition of this kind, we would recommend the enactment of a law providing a mode for condemning property required by the government—a power amply possessed under the Constitution. But if Congress should deem it unadvisable to take action of the kind here referred to, we think the Secretary of War should be constrained to ask such legislation on the part of California, which has already upon her statute book a law authorizing condemnation to an amount not exceeding fifty acres. To such a mode of determining finally the price proper to be paid by the government, Mr. Throckmorton could not consistently object, as, in his letter of September 4, 1857, addressed

to the Secretary of War, he intimates a willingness to have the value determined by disinterested persons. We quote his language:

"Regarding the valuation of the land by a jury, I would remark that I would have no particular objection to such a course, provided that both parties were equally bound to abide the award."

In answering the third inquiry, we refer to the following facts:

1. That the government, as far back as 1852, indicated its disposition to use the land in question.

2. That the then and subsequent owners became cognizant of that fact.

4. That, disconnected from the wants of the government, the property has little or no intrinsic value.

5. That before the government proposed the purchase of the property Mr. Weller, then United States senator, proposed the appropriation of \$300,000 to purchase a site and construct additional defences for San Francisco, assuming that \$200,000 of the money would be required for the former purpose, and that he then had in his eye the "Lime Point" tract.

6. That at or about that time Mr. Throckmorton, the owner, without any consultation with Mr. Weller as to price, and without any communications between them, as they assert, fixed the price for this property at the precise sum estimated by Mr. Weller at the time the appropriation was made.

7. Efforts have been made by Throckmorton and others to give a fictitious value to the property, and to mislead the government by the suppression of material facts.

The first fact here stated cannot be contradicted. The second and third facts are exhibited in the testimony of Mr. McKee, already quoted, and the letter of Mr. Della Torre, of July 3, 1857, which contains the following expression:

"Mr. T." (Throckmorton) "has, however, made up his mind to have \$200,000 for it, as he believes the United States desire to and must have it immediately."

The fourth point is established by all the testimony in answer to the first general inquiry.

To establish the fifth fact, we refer to the letter of Mr. Weller to the Secretary of War, of June 18, 1857, and the one to Mr. Della Torre of July 17, 1857.

Letter from Mr. Weller to Secretary of War.

SAN FRANCISCO, CALIFORNIA,

June 18, 1857.

DEAR SIR: At the last session of Congress \$300,000 was appropriated to purchase a site and construct additional fortifications at the entrance to the bay of San Francisco. I regret to hear that some difficulty exists as to the selection of the site. As that item was inserted in the appropriation bill upon my motion, I may be permitted to say that I certainly supposed that "Lime Point," being in the first line of defences, would be purchased. The importance of fortifying this point at once will be apparent from a glance at the survey in your

office. Until this is done the works on the opposite side of the entrance (Fort Point) would be almost useless. The title of the land is now clear, and the owner is exceedingly anxious to have this question settled, as he has many tempting offers from private individuals. I feel quite confident that the property can never be purchased for less than the sum now asked. The government already occupies a portion of this land for light-house purposes.

I have no pecuniary interest in this matter, but write you now because of my anxiety to have this harbor fortified as soon as possible. I therefore respectfully invite your early attention to this matter.

With many wishes for your health and prosperity, I am, very truly, your friend,

JOHN B. WELLER.

Hon. JOHN B. FLOYD, *Secretary of War.*

Letter from Mr. Weller to Mr. Della Torre.

SACRAMENTO, July 17, 1857.

MY DEAR SIR: I was anxious to have seen you in regard to the purchase of Lime Point, but the multiplicity of my engagements when in San Francisco prevented it. The appropriation of \$300,000 was inserted in the bill on my motion. I expected that \$200,000 would be necessary to purchase the site, and that the remainder would be expended in commencing the work. As it is not probable that the site can be purchased for a less sum, and as time is somewhat important, I hope you may be able to settle the matter without delay. It may be proper to remark that I have no pecuniary interest whatever in this matter, and write simply because I desire to see our bay fortified as soon as possible.

Very truly, your friend,

JOHN B. WELLER.

Hon. MR. DELLA TORRE.

In support of the sixth fact stated, we call attention to the following extract from the letter of Mr. Throckmorton to the Secretary of War, dated June 4, 1857, without comment:

"I will trespass upon your time and indulgence only to add that the price of the tract, viz: two hundred thousand dollars (\$200,000) is the amount originally entertained in all my negotiations in the matter during the term of your predecessor, (Mr. Secretary Davis,) and is also the amount contemplated in the bill, and is neither exorbitant nor speculative, but the actual value of the property as sustained by sales for cash immediately adjoining."

The seventh fact is elicited when we take into consideration that the impression has attempted to be made upon the Secretary of War that \$130,000 were loaned and secured upon the 1,700 acres proposed to be conveyed to the government, and that consequently the property had a value beyond that sum, when, in reality, the mortgage spoken of was secured upon the whole rancho owned by Mr. Throckmorton

or his predecessor in the title, containing nineteen thousand five hundred and seventy-one (19,571) acres.

If parties interested did not mean to falsely impress government, it is difficult to imagine any reason which should induce them to introduce the matter of the mortgage, and leave it to be inferred that it was confined to the "Lime Point" tract.

But it must not be forgotten that the government engineers only advised the purchase of six hundred acres, which, according to the highest estimates of Messrs. McKibbin and McKee, fully acquainted with the lands, could not exceed the value of \$3,000, and that it is Mr. Throckmorton who seeks to constrain the government to purchase the 1,700 acres, represented by him as 2,300 or 2,400, at the price of \$200,000.

In conclusion, the undersigned, from a careful review of all the facts bearing upon the point concerning which they were instructed to make inquiry, are satisfied that the price fixed by Mr. Throckmorton for the "Lime Point" tract is most extravagant and unfair; but he, believing it to be indispensable to the government, and that it will eventually accede to his demands, persistently adheres to it, and to hasten the sale false representations have been made affecting its value, and that other persons were willing to purchase on terms more advantageous to the owner.

Under these circumstances the transaction loses all the characteristics of fairness, and to consummate the purchase would be to sanction dishonest practices. We therefore submit the following resolution:

Resolved, That it be recommended to the Secretary of War to suspend all negotiations touching the purchase of the "Lime Point" tract, as a site for fortifications on the north side of the bay of San Francisco, until an effort shall be made to procure the enactment of laws by Congress or the legislature of California authorizing the condemnation of such property as the government may there require.

D. C. BRODERICK.
HENRY WILSON.
PRESTON KING.

Hon. Mr. McKIBBIN: I have no personal information of the alleged fraud further than I can infer from the alleged fraud, nor of the value of the property for government purposes. I lived on property immediately adjacent for fifteen months, while serving as naval storekeeper, and know the entire property. It is worth comparatively nothing, except for military purposes; little or nothing for agriculture or grazing; is abrupt, and rugged. I know of no place on the coast side of this property where vessels can safely land. I know it to be valuable for fortification, as San Francisco cannot be as effectually defended as with the projected fort. I know of no point within some distance where forces could land, owing to the prevailing winds. The chief value is for military purposes. It is dangerous to cross from San Francisco. The distance is seven miles from San Francisco to Saucelito, the ordinary and safest landing on that coast. The land is worthless for country residence; the character of the entire Throckmorton property is such as to make it unfit for private residences. The more eligible portion of the ranch was laid out in town lots in 1849 or 1850. It was then a considerable settlement. Many of the houses were removed to San Francisco, and the lots were sold for taxes. None of this property has ever been in cultivation. The best agricultural lands in California are worth from \$10 to \$30 an acre; the property in question is not, in my judgment, worth \$5 per acre. All property on that coast has decreased in value. I do not think any property on that coast would sell for much above that average to-day, if at all. The position of this property, its unpleasant climate, the difficulty of reaching it, render it impossible, in my judgment, for many years to come, if ever, to be used for private residences. The tendency of population has been to the opposite side of the bay and west of San Francisco.

Mr. FISH, being duly sworn, said:

That he knew nothing about the contract for the purchase of this land; that it was valuable on account of its contiguity to San Francisco; that some parts of it might be advantageously divided into small farms of a few acres each. About 600 acres of it was good land for agricultural purposes, and in good times it would sell for \$30 per acre. The greater portion of it was hilly and abrupt, but might be laid out into suburban villas. That it had upon it quarries of boulder rocks. The soil was sandy, and with clay suitable for bricks. The rocks, clay, and sand would furnish materials for building foundations for fortifications. Could not state its market value, but it was very valuable for warehouses from Lime Point to the northern boundary, as the water was deep and afforded a good harbor for ships of greatest tonnage. It was sometimes rough in crossing, but never dangerous in crossing in proper vessels. The climate is delightful. A mile or two of this water front might be used for warehouses, with great advantage to government, for storing supplies, guns, &c., as their ships could come directly to the government warehouses. It was of great value to the government, and the owner would be foolish to sell a part without receiving the value of the whole.

R. A. FISH.

The portion outside of the 600 acres is entirely valueless, in my opinion, in an agricultural view. In my judgment the property is immensely valuable in a prospective view.

BEVERLEY C. SANDERS, being sworn, says :

He knows well the land in question ; it is the purchase of Throckmorton from Richardson, and does not include Saucelito. The land is very valuable for government purposes. Nothing grows upon it but grass and flowers. It is opposite Fort Point, but is not so easy of cultivation as other lands, though no attempt has been made to cultivate it. He cannot state the market value, as that depends on circumstances. It might not be settled for some time. He thinks it has a prospective value. Saucelito is the nearest town to Lime Point. It may be hereafter sold for country residences, as lands more conveniently located will first be settled. The land is broken and high ; is grazed upon by cattle and horses, as other lands are in the neighborhood of San Francisco. The tract is accessible in only a few places by reason of its abrupt and steep banks, though roads might be cut through their banks. Lands on Contra Costa have been sold for \$50 per acre. When Throckmorton first proposed to sell this land to the government, those holding mortgages conferred with him, and said when they expected to get the control of it, they had fixed the price of it at \$600,000. I advised him that the price was exorbitant, and if he wished to get relief from his embarrassments he should fix the price at a reasonable figure and thus be enabled to close the transaction speedily and be relieved. He then fixed the price at \$200,000. He would be willing, if he (Sanders) were able to purchase and hold the property for a future rise, to pay the price named. If a fort were built there it might increase in value, but the present owners would not sell a portion of it.

BEVERLEY C. SANDERS.

Col. DE RUSSY, being sworn, says : He knows of no attempt by fraud to get more for the Lime Point purchase than was originally asked for it. Never heard of any suspicion of fraud, or he would not have acted in the matter as he did. His negotiations for the government were, first, on account of its intrinsic value ; and secondly, for the value of its location for government uses. He does not think that delay will cause it to be purchased at a lower price than that charged for it. The works ought to be promptly commenced, as they are necessary for the defence of San Francisco. It would be more important for that defence to purchase Lime Point and erect the fortifications there, than to increase the works on Fort Point side. Lime Point has advantages which Fort Point has not, in having an abundance of gravel, which was purchased from the former for the latter at a cost of \$20,000 to \$25,000. It is necessary to cover the position of Lime Point by a redoubt, a bluff for which has been marked out. Fifty acres of land would not include these sites. When government began the Alcatraz works they contemplated the occupation of this site also. The cross-fire from Alcatraz is necessary for the complete protection of San Francisco. It would be possible for a vessel to pass through the Golden Gate during the foggy season. Alcatraz is over two miles

from Fort Point. Fortifications inside would be necessary even when Lime Point is fortified. Knows nothing of the coast from Monterey to Lime Point; the distance is about 80 miles. There are not many places on the coast where troops could be landed. An enemy attacking in the rear from Monterey would have to travel 140 miles by land, and to pass over mountains. Was originally in favor of purchasing 600 acres of this land. Some portions of this property would make handsome residences, and could be sold out in lots. At the time the sale was first proposed property was high. There is an absolute necessity to guard the approach on all sides, and hence the need of so large a purchase. On the Throckmorton side there are abundance of sand and broken stone, valuable for concrete, good brick clay, and quarries which have not been worked, and the value of which for building is, therefore, doubtful. His estimate of the value of these lands was partly obtained from persons of experience, and partly from their value as sites for fortifications. Thinks a part of this property will some day become a part of San Francisco; the value is somewhat prospective. It would probably cost from \$25,000 to \$30,000 less to build a fort on Lime Point side than upon San Francisco side, because of the building materials on the former tract. The Board of Engineers recommended 600 acres, but this would not include the advantage of the boat landing near the northwest corner of the tract, nor the site on which the government has already constructed a light-house, at considerable expense. On account of the advantage of this boat landing to an enemy in obtaining a supply of fresh water, and for other considerations, it is deemed advisable to defend it by a redoubt. Unless there was a considerable reduction in the price, it would be advisable to purchase the entire Throckmorton tract.

Captain WRIGHT:

Question. Do you consider that any contract or agreement has been made with Mr. Throckmorton by which the government is bound to purchase his land at Lime Point?

Answer. Prior to January, 1858, there was no agreement nor, as far as I know, any act on the part of any officer of the government which bound the government to purchase the land, or could lead Mr. Throckmorton to infer that it would be purchased. He knew that the government desired to possess the position of Lime Point for defensive purposes, from the fact that it had some years before been reserved for such purposes; and he may have been convinced that the government must have it sooner or later; but his statement in one of his letters to the present Secretary of War to the effect that the question of price had been settled by his predecessor in the War Office, and that an appropriation only was wanting to conclude the purchase, is, I believe, entirely incorrect. There is nothing in the negotiations, as detailed in the papers in the case, to give the slightest support to such a statement. Whether his subsequent negotiations with the United States district attorney at San Francisco, based upon a letter written by me, under instructions from the Secretary of War, gave him any claim upon the United States to purchase the land, can be better decided by the committee than myself. The letter referred to, dated in January, 1858, instructs the district attorney to conclude the

purchase of the whole tract offered by Mr. Throckmorton at a price not exceeding \$200,000 ; the title to be subject to the approval of the Attorney General. The district attorney, in consequence of these instructions, sent, for the examination of the Attorney General, certain papers relating to the title, who declared them insufficient to establish the title in the United States, and they were returned, with the opinion of the Attorney General, to the district attorney. Before the necessary steps had been taken to cure the defects of title pointed out by the Attorney General, the negotiations were entirely broken off by order of the Secretary of War.

Question. Do you consider the occupation of Lime Point by a fort as essential to the defence of the entrance of the bay of San Francisco ?

Answer. I conceive that Lime Point must be fortified in order to effectually defend the entrance

Question. Would it not be possible to close the entrance by additional works on the Fort Point side ?

Answer. It might be possible, but not so effectually or at so little cost. It is obviously better to defend a passage by the occupation of the two sides than by works on one side only, even when the latter works possess greater strength than the former.

Question. Do you think it better to pay the sum demanded by Mr. Throckmorton and occupy Lime Point than to use this sum in increasing the defences on the Fort Point side ?

Answer. It is not possible to answer the question accurately without entering into an investigation of the subject. I should, however, say that it would cost less to pay the \$200,000 asked for the site, and to construct the necessary defences there, than to attempt to accomplish the same end by an extension of the defences on the Fort Point side, where, the land being owned by the government would cost nothing.

Question. What number of acres does the Throckmorton tract, in your opinion, contain ?

Answer. Mr. Throckmorton, in one of his letters offering to sell this land to the government, says it contains from 2,300 to 2,500 acres. I had an estimate made from the map, and found it to fall short of his lowest estimate between 500 and 600 acres, making the estimated quantity in the tract between 1,700 and 1,800 acres.

Mr. McKEE, being duly sworn, says he knows nothing about the allegation of fraud in relation to the sale of Lime Point. Has been upon the lands, but knows nothing of their value compared with other lands in the vicinity. The 2,300 acres proposed to be sold by Mr. Throckmorton are only valuable for government purposes. Mr. Richardson selected this land in preference to any other as being valuable by its position, and it has always been so considered in view of the necessity of the government, but can't say what its market value is, yet it would sell for four or five dollars per acre for agricultural purposes. The water privileges are valuable, having a perfect harbor ; all the water used by vessels to California is drawn from this land, and it is carried as much as 28 miles to supply government works. The water company's reservoir is partly supplied from springs within the line of this purchase. Water is not so valuable now since its introduction into San Francisco. This water is the best for taking to

sea, and is so used by all the shipping and steamers on account of its superiority. The right to use the water was leased from Mr. Richardson, now from his heirs. The benefits arising from these springs would enure to the purchaser of the property. Since water has been introduced into San Francisco the Throckmorton springs are not so important. The springs on the Throckmorton tract are greatly relied upon in dry seasons. The main supply is received from near Saucelito. Lime Point is one and a half miles from the latter place. Has never examined the land, but heard that it contained clay and rock ; does not know that the quarries upon it have ever been worked. Has dealt in California property. In 1854 property there was very high ; it has since fallen. Property near San Francisco, farming lands and town lots, much improved lately, but don't know to what extent. This site is better suited for residences in winter than in summer, owing to peculiar prevailing winds. Agricultural lands in California are worth from 35 to 50 dollars per acre when not on the bay. The value of this property arises from its situation. Its market value does not include its value to the government. If government should not purchase, California should, to defend San Francisco, as the harbor at Lime Point is excellent. It is 32 miles from Lime Point to Half-moon bay, where an enemy would land in case of an attack in that way.

Record of correspondence from the files of the War Department relative to the proposed purchase of Lime Point, in California.

WAR DEPARTMENT, February 8, 1859.

SIR: In compliance with the request contained in your letter of the 1st instant, I have the honor herewith to transmit copies of all the papers on file in this department relating to the purchase of Lime Point, in California, as a site for fortifications.

The Senate resolution enclosed in your letter is herewith returned.

Very respectfully, your obedient servant,

JOHN B. FLOYD,
Secretary of War.

HON. JEFFERSON DAVIS,
Chairman Committee on Military Affairs, Senate.



No. 1.

SAN FRANCISCO, November 3, 1855.

SIR: I have the honor to lay before you a letter from Mr. S. R. Thockmorton, the proprietor of the lands lying between Point Bonita and the town of Saucelito, including the head lands on the north side of the Golden Gate.

This gentleman having learned that the government reserve No. 2, at Lime Point, includes some three thousand five hundred acres of his estate, proposes in his letter to sell the tract, indicated by red dotted

lines in the drawing alluded to and accompanying that letter, for two hundred thousand dollars to the government.

The advantages set forth by that gentleman, such as the quarries, the fresh water streams, the clay, and the gravel, will avail but little in reducing the general cost of the fortifications proposed to be erected at Lime Point.

The quarries do not afford such stone as would probably be used for a permanent work, and their localities are too difficult of access.

The clay, although at a distance from the site of the work, may be taken advantage of for the making of bricks, but their transportation would make their cost nearly equal to those purchased in the market.

The gravel alluded to is of the best quality, and may, if much concrete is used in the construction of the work, be a saving of from eight to ten thousand dollars. As for the water, it will be cheaper to obtain it from Saucelito than from any brook or stream I have seen on the tract he proposes to sell.

There are some few valleys on the tract which, in the course of time, might be disposed of for grazing and agricultural purposes, but they, I apprehend, will at no time sell for as much as he asks per acre for the entire reserve. The valleys, however, bordering on the line dividing the town of Saucelito from Lime Point, on the bay of San Francisco, are generally susceptible of cultivation, and will, I believe, advance in value as the town of Saucelito increases in population. The price, however, for the whole tract appears to me too high to induce the government to purchase; and yet, when we take into consideration the proximity of this reserve to the most important and largest city on the Pacific, the price named may not be so exorbitant.

I would remark that the light-house lately constructed on Point Bonita is included in the proposed tract, and that there is in the neighborhood of the light-house some arable lands.

The head lands, from Point Bonita to Lime Point, are generally abrupt on the sea-side, and of a rock formation, and yet the valleys intervening and their summits are covered with a natural growth of the country, the wild oats, which afford good pasturage during the whole year.

Should the government think proper to entertain the proposition made by Mr. Throckmorton in a favorable light, I would respectfully suggest that the district attorney of the United States for the district of Marin county be instructed to examine the title or titles under which that gentleman claims or is possessed of the lands comprised within the tract he offers to sell to the government.

I have the honor to be, with the highest respect, your obedient servant,

R. E. DE RUSSY,
Lieutenant Colonel Engineers.

Brig. Gen. JOS. G. TOTTEN,
Chief Engineer of the United States, Washington, D. C.

No. 2.

SAN FRANCISCO, *October 4, 1855.*

DEAR SIR: Having been informed that it is the intention of the government to fortify the north side of the entrance of this harbor, and being the owner of the lands necessary to the uses of the government for that purpose, I take the liberty of drawing your attention to the subject.

The lands forming the northern boundary of the narrows, or entrance to the bay of San Francisco, and opposite the fortifications at Fort Point, consist of a succession of headlands and bluffs, with valleys between supplied with numerous streams of fresh water flowing from perpetual springs. The tract laid down on the maps of the United States engineers, and marked reservation No. 2, is the land which I propose to sell to the government, to which maps I would refer you, deeming it unnecessary to enter into a minute description of the lands or localities about this harbor, in reference to which you are perfectly informed, but will only refer to those matters in regard to the same which may not have been brought to your notice. Upon these lands there are two extensive quarries of superior stone, similar to that now being purchased for the public works now in progress of erection in this harbor. There is also an abundant supply of gravel, and also clay of a superior quality for brick making.

The extent of the tract as laid down in reservation embraces about three and one-half miles upon the harbor, and extending back to the summit of the hills about one and a quarter miles, and is supposed to contain from twenty-three hundred to twenty-five hundred acres, about six hundred acres of which is good arable land, level, and well watered.

The tract of land is well known as valuable for many purposes, and I am disposed to be governed in my estimation of its value by its availability for farming and business uses alone, and without reference to the purposes for which the government may require it. In this view of the matter, I have concluded to place the price at two hundred thousand dollars, which price will, I think, not exceed the lowest estimate which would be made of the value of so large a tract of land in so important a locality. In reference to further description of the premises, I would refer you to the accompanying map.

With much respect, your obedient servant,

S. R. THROCKMORTON.

Col. R. E. DE RUSSY,

Corps of Engineers, Fort Point Fortifications.

No. 3.—*Endorsement.*ENGINEER DEPARTMENT,
December 5, 1855.

When the ground designated herein as *Reserve No. 2*, was recommended to be withheld from sale for fortification purposes, a large tract was included in order to embrace all the points which might possibly be needed as fort sites. The board of engineers has now made a selection among these for the principal work certainly, and probably for any auxiliary defences; and, no doubt, a portion of the reserve can be dispensed with.

I recommend, therefore, that the board be directed now to designate the outlines of the tract which they think it desirable for the United States to retain; making this no larger than really necessary; and that the district attorney be instructed to investigate and report upon the title of the tract so selected, as soon as he is duly informed thereof by the board.

Respectfully, your obedient servant,

J. G. TOTTEN,

Brevet Brigadier General and Colonel Engineers.

Hon. JEFFERSON DAVIS,

Secretary of War.

JANUARY 18, 1856.

Approved:

JEFFERSON DAVIS,
Secretary of War.

No. 4.ENGINEER DEPARTMENT,
Washington, January 25, 1856.

SIR: The recommendation of this department, endorsed on Colonel De Russy's letter of November 3, 1855, (copy of which is herewith,) having been approved by you, I have the honor to suggest that the Attorney General be requested (in accordance with the joint resolution of Congress of the 11th September, 1841,) to instruct the United States district attorney for the district of Marin county, California, to investigate and report upon the title of the tract which may accordingly be selected by Colonel De Russy and the board of engineers for fortifications on the Pacific.

Colonel De Russy has been instructed by this department to take immediate steps with the board to designate the land desired, and, on acquiring the information, to communicate the same to the district attorney.

Very respectfully, your most obedient,

JOSEPH G. TOTTEN,

Brevet Brigadier General and Colonel Engineers.

Hon. JEFFERSON DAVIS,

Secretary of War.

No 5.

ATTORNEY GENERAL'S OFFICE,
February 2, 1856.

SIR: I have the honor to acknowledge the receipt of your communication of the 26th ultimo, requesting an investigation of the title to a tract of land proposed to be purchased for military purposes at Lime Point, in California.

In reply, I would respectfully suggest that the agent of your department at that place request the United States attorney for the northern district of California to examine the conveyances offered, and the abstract and evidence of title to the premises, and that he compare the same with the laws of the State, and certify his opinion thereon before they are sent to this office for a final opinion as to the validity of the title thereto.

I am, very respectfully,

C. CUSHING.

Hon. JEFFERSON DAVIS,
Secretary of War.

No. 6.

FEBRUARY 2, 1856.

DEAR SIR: I have orally explained very fully to General Totten the course of proceeding in this matter, so that he will need no further instructions.

This officer will employ the district attorney, and pay him in his private capacity out of the appropriation for the purchase of the same.

Yours, truly,

R. H. GILLET.

A. CAMPBELL, Esq.

No. 7.

SAN FRANCISCO, CALIFORNIA,
March 4, 1856.

SIR: Your letter of the 24th of January, containing an extract of the recommendation of the department relative to the proposition made by Mr. Throckmorton to sell Lime Point has been received, and I will immediately convene the board to carry out the wishes of the department as therein indicated.

I have the honor to be, sir, with the highest respect, your obedient servant,

R. E. DE RUSSY,
Lieutenant Colonel Engineers.

Brig Gen. JOS. G. TOTTEN,
Chief Engineer of the United States, Washington, D. C.

No. 8.

SAN FRANCISCO, *April 3, 1856.*

DEAR SIR: In compliance with your request, I have handed to the district attorney for the northern district of the State of California the title papers of my lands of Saucelito, as follows, viz:

“Grant by the Mexican government to William A. Richardson.

“Certificate of survey and juridical possession.

“Decree of confirmation by the board of land commission; decree of confirmation by the United States district court for the northern district of the State of California; and also certified copy of deed of conveyance, (and record of the same,) made by William A. Richardson to me.” This presents a clear chain of title in myself, and I, of course, am prepared to make a perfectly clear conveyance of the lands. In regard to the subject of my selling to the government a lesser quantity of land than that already offered by me, I would only observe that, in placing a price upon the tract which I have offered to sell, the matter of quantity was not so much considered as was the locality, as affecting the contiguous lands. In segregating the tract which I have offered to dispose of, it was done in reference to the natural boundaries of which I was so enabled to avail myself. The balance of the tract is a question which would be left is now occupied by the government for light-house purposes, and would also, to an extent, be cut off by the disposal of the lesser quantity. As you are quite familiar with the confirmation of all that side of the harbor. I need only call your attention to those facts. In short, I much prefer to make the sale as first offered, inasmuch as the position designated by you takes up all the land which is of any value to me in that quarter.

I would merely add, that the site of the town of “Saucelito,” which immediately joins the eastern boundary of the tract, was sold originally for the price of four hundred dollars per acre; and looking to the future as compared with the growth of other cities on the seaboard of the United States, it is quite evident that much of the land in question must very soon attain an equal if not much higher value.

With respect, I remain your obedient servant,

S. R. THROCKMORTON.

Col. R. E. DE RUSSY,

Corps of Engineers, Fort Point Fortifications.

No. 9.

SAN FRANCISCO, *California, April 4, 1856.*

SIR: I have the honor herewith to enclose a sketch showing the tract of land which the board of engineers for the Pacific coast have concluded to recommend as the reserve for the defences at Lime Point.

Rep. No. 389—2

It includes between five and six hundred acres, and takes in Point Cavallo and the two prominent heights in the rear of Lime Point.

Point Cavallo is looked upon as an important point for future defences, not only on account of its relative position to Alcatraz island, Lime Point, and Fort Point, but also as it commands the harbor of Saucelito, the great watering place for ships in the bay of San Francisco. The two heights in the rear of Lime Point are essential for outworks; the prominent one is at reference 960' on the coast survey map, the one nearer to the site of the fort is at reference 480'.

A trace of the plat recommended to be secured by purchase upon a scale similar to the coast survey map, with horizontal curves, will follow by the next mail.

It was only yesterday that Mr. Throckmorton placed in the hands of the district attorney his title papers. I could not, in consequence, obtain in time the district attorney's opinion for transmittal by this mail. Colonel Inge informs me, however, that he embarks by this steamer for Washington, and will place his opinion before the proper authorities there.

I enclose a letter received to-day from Mr. Throckmorton upon the subject.

With the highest respect, I have the honor to be, sir, your obedient servant,

R. E. DE RUSSY,
Lieutenant Colonel Engineers.

Brig. Gen. Jos. G. TOTTEN,
Chief Engineer of the U. S. Army, Washington.

No. 10.

ENGINEER DEPARTMENT,
Washington, April 25, 1857.

SIR: The within letter is submitted for the information of the Secretary of War. It contains the opinion of Lieutenant Colonel De Russy, of the engineers, just returned from San Francisco, in relation to the value of the land wanted for fortifications at the entrance to that bay.

The reputed owner demands for the whole tract the sum of \$200,000, stating the quantity to be from 2,300 to 2,500 acres, which is probably too large an estimate of quantity.

For a portion of the above, amounting to about 600 acres, which could be made to suffice for the fortifications, although it would leave out land wanted for light-house purposes, the owner declined to make an offer, and, it is understood, would make for this smaller portion no great reduction of total price.

Colonel De Russy is of opinion that the 600 acres, if taken alone, might be really worth \$150 per acre—total \$90,000.

Also, that, if we take the whole tract, it may be worth \$78 per acre; which, at the owner's estimate of quantity, namely, say 2,300 acres, would amount to \$179,000.

Colonel De Russy names Captain Halleck, as a lawyer, to whom

the charge of making the purchase, preparing papers, &c , might be safely confided. I know this gentleman (formerly an officer of engineers) to be a most able and honorable man, in every respect worthy of all trust and confidence.

I have, on the above statement, to recommend that I be authorized to employ Captain Halleck to proceed in the affair, subject to the following conditions:

1st. That the title is to be approved by the Attorney General of the United States.

2d. That he purchase, if possible, the smaller tract, bounded on the north by the red dotted line, and on the west by the black dotted line of the map herewith, containing about 600 acres, for a sum not to exceed \$100,000 for the whole; or, more exactly, the quantity within those limits being determined by survey, at a price not to exceed \$166 66 per acre.

3d. If that be impracticable, that he purchase the whole tract lying southward of the red dotted line on said map, at a rate per acre not to exceed \$80, the quantity to be ascertained by actual survey.

4th. If a purchase be impracticable on either of the above conditions, that he then secure to the United States the refusal until he can obtain new instructions, reporting for the consideration of the Secretary of War the best terms that, in his opinion, can be commanded.

It being understood that the full amount of the purchase-money will be paid as soon (after the first day of July next) as the Attorney General shall pronounce the title in the United States to be valid.

Also, that Captain Halleck is to see to the preparation of all papers necessary, in the opinion of the Attorney General, to the establishment of title, and the investing the United States therewith.

And I also recommend that the compensation to Captain Halleck for securing the land, on terms that the Secretary of War shall approve, be the sum of \$5,000, with the addition of ten per cent. on any reduction he may be able to effect below the sums above fixed.

I have the honor to be, very respectfully, your obedient servant,

JOS. G. TOTTEN,

Brevet Brigadier General and Colonel Engineers.

Hon. J. B. FLOYD,
Secretary of War.

[Endorsement.]

WAR DEPARTMENT, June 1, 1857.

Colonel P. Della Torre, United States district attorney in California, is hereby employed and authorized to discharge the duties for which the chief engineer recommends Captain Halleck, at a compensation of \$1,000 for securing the land, investigating the title, and arranging the papers for the sale, with the addition of ten per cent. on any reduction he may be able to effect below the sums herein fixed.

J. B. FLOYD,

Secretary of War.

No. 11.

WASHINGTON, *April 23, 1857.*

SIR: In answer to your letter of this date, in relation to the price that may with propriety be offered by the government for the site of defensive works on the north side of the entrance into San Francisco bay, I have the honor to state that, on the supposition that all the land offered by Mr. Thockmorton be taken by the government, my opinion is that a portion of it, particularly the arable lands, is worth about \$100 per acre, and that the other portions of that tract—taking into consideration the advantages set forth by Mr. Thockmorton, some of which will avail in the construction of the fortification there to be erected—is worth about \$70 per acre.

Agreeably to this opinion, I would say that \$60,000 is the maximum worth of the six hundred acres of arable land, and that the maximum value of the remaining 1,700 acres of wild lands may be stated at \$119,000, making for the whole tract, if it really contains 2,300 acres, a sum equal to \$179,000, whilst Mr. Thockmorton's price is \$200,000.

Secondly. On the supposition that the quantity of land taken be limited by the lines shown on the map submitted from the board of engineers, containing about 600 acres, I would say, taking into consideration the extra value of the ranch included in that portion of the whole tract, that it may be worth about \$150 per acre, or about \$90,000.

I would respectfully suggest, that if the government intends to purchase the whole or a part of the land proposed by Mr. Thockmorton for the fortifications at Lime Point, that Captain Halleck, of the firm of Halleck, Peachy & Co., of San Francisco, be instructed to make all reasonable offers for the whole tract. That gentleman is perfectly conversant with the prices of land in that vicinity, and, as a lawyer, eminently qualified to prepare all papers necessary to be placed before the Attorney General of the United States for his inspection. I presume that 2½ per cent. will be a satisfactory compensation for his services.

As the light-house constructed on Point Bonita is on the tract included in the reserve, I would recommend the purchase of the whole of the land proposed by Mr. Thockmorton.

I have the honor to be, sir, with the highest respect, your obedient servant,

R. E. DE RUSSY,
Lieutenant Colonel of Engineers.

Brig. Gen. Jos. G. TOTTEN,
Chief Engineer of the United States.

No. 12.

ENGINEER DEPARTMENT,
Washington, June 2, 1857.

SIR: Congress, by act of March 3, 1857, appropriated the sum of \$300,000 "to purchase a site and construct additional defences for San Francisco, California," and it being now the desire of the War Department to procure the land for the site with all practicable despatch, I am instructed by the Secretary of War to place the matter in your hands.

The land which it is designed to procure lies on the north side of the entrance to the bay of San Francisco, and is claimed by Mr. R. S. Throckmorton, who, in his proposition to the government, offers his whole tract, estimated by him as containing from 2,300 to 2,500 acres, for \$200,000. This estimate of quantity is, however, believed to be too large. He has further expressed an unwillingness to divide the tract, and it is understood would not make for the smaller portion which would suffice for the defences any material deduction in price. The portion which the government desires to procure is that bounded on the north by the red dotted lines and on the west by the black dotted lines of the sketch herewith, and contains by computation not far from 600 acres. The whole tract owned by Mr. Throckmorton, and offered to the government, is that lying south of the red dotted line on the same sketch.

To effect the purchase of this land, I am authorized by the Secretary of War to employ you, your action in the business to be subject to the following conditions:

1. That the title is to be approved by the Attorney General of the United States.

2. That you purchase, if possible, the smaller of the tracts above referred to, containing about 600 acres, at a price not exceeding \$166 66 per acre, the quantity within the limits marked on the sketch being determined by actual survey.

3. If that be impracticable, that you purchase the whole tract lying south of the red dotted line on the sketch at a rate per acre not exceeding \$80, the quantity to be ascertained by actual survey.

4. If a purchase be impracticable on either of the above conditions, that you then secure to the United States the refusal till you can obtain new instructions, reporting to the Secretary of War the best terms that, in your opinion, can be commanded.

5. It is to be understood that the full amount of the purchase-money will be paid as soon (after the 1st of July next) as the Attorney General shall pronounce the title in the United States.

6. It is to be further understood that you are to attend to the preparation of all papers necessary, in the opinion of the Attorney General, to the establishment of title, and to investing the United States therewith.

7. For securing the land, investigating the title, and arranging the papers for the sale, according to the provisions and conditions above enumerated, I am authorized by the Secretary of War to offer you a compensation of one thousand dollars, (\$1,000,) with the addition of

ten (10) per cent. on any reduction you may be able to effect below the sums above specified.

I have, &c.,

JOS. G. TOTTEN,
Bvt. Brig. Gen. and Col. Eng'rs.

P. DELLA TORRE, Esq.,
U. S. District Attorney, San Francisco, Cal.

No. 13.

SAN FRANCISCO, June 4, 1857.

DEAR SIR: I am the owner of the tract of land embracing the site for fortifications at "Lime Point," in the harbor of San Francisco, for the purchase of which an appropriation was made by the last Congress. For some months prior to that appropriation I have been in correspondence with the department, through the medium of Colonel De Russy, in reference to the sale of the lands in question; which correspondence, and the maps accompanying the same, on file in the department, will place you in possession of all the facts connected therewith.

My object in now addressing you is respectfully to solicit your convenient attention to the completion of the object of that appropriation. The tract of land required for the use of the government embraces very nearly the entire water frontage of the northern side of the entrance of this harbor, and is valuable and available to me for many purposes. In view of making this sale to the government I have refrained from making any sales within its boundaries for nearly two years, in order that I might, at any time, convey it to the government free from any annoyances of civil occupancy, or private claims of any nature. As you are aware that lands so near a growing city like this are always saleable, I need not mention the loss of opportunity which must accrue to me by reserving from sale for so long a period lands so situated.

Colonel De Russy is perfectly informed in regard to the particulars of my previous negotiations in reference to the matter with the government, and to him I would beg leave to refer you. I will trespass upon your time and indulgence only to add that the price of the tract, viz: two hundred thousand dollars, (\$200,000,) is the amount originally entertained in all my negotiations in the matter during the term of your predecessor, (Mr. Secretary Davis,) and is also the amount contemplated in the bill, and is neither exorbitant nor speculative, but the actual value of the property as sustained by sales for cash immediately adjoining. My title is perfect, having been investigated by order of the Attorney General, and reported upon by the district attorney of this district. Whilst I would apologize for consuming so much of your valuable time, I would earnestly solicit your attention to the early settlement of the matter, as important to the interest of the government as well as that of myself.

With much respect, I remain your obedient servant,

S. R. THROCKMORTON.

Hon. JOHN B. FLOYD,
Secretary of War, Washington City.

No. 14.

SAN FRANCISCO, *California*, June 18, 1857.

DEAR SIR: At the last session of Congress \$300,000 was appropriated to purchase a site and to construct additional fortifications at the entrance to the bay of San Francisco. I regret to hear that some difficulty exists as to the selection of the site. As that item was inserted in the appropriation bill upon my motion, I may be permitted to say that I certainly supposed that "*Lime Point*," being in the first line of defences, would be purchased. The importance of fortifying this point at once will be apparent from a glance at the survey in your office. Until this is done, the works on the opposite side of the entrance (Fort Point) would be almost useless; the title of the land is now clear, and the owner is exceedingly anxious to have the question settled, as he has many tempting offers from private individuals. I feel quite confident that the property can never be purchased for less than the sum now asked. The government already occupies a portion of this land for light-house purposes.

I have no pecuniary interest in this matter, but write you now because of my anxiety to have this harbor fortified as soon as possible. I therefore respectfully invite your early attention to this matter.

With many wishes for your health and prosperity, I am, very truly, your friend,

JOHN B. WELLER.

Hon. JOHN B. FLOYD,
Secretary of War.

No. 15.

SAN FRANCISCO, *July* 3, 1857.

DEAR SIR: Mr. J. H. Wise has delivered me the papers sent by you, authorizing and instructing me as to the purchase of certain lands on the north side of the bay of San Francisco for government fortifications.

On the first instant I also received by mail, from Brevet Brigadier General Totten, of the engineer department, a communication on the subject, accompanied by a sketch of the site.

I now beg to report to you:

I have had two interviews with Mr. Throckmorton, the claimant of the land, and have conferred fully with him.

He stands upon his original proposition, and declines any other terms. He refuses to sell a portion of his tract, as he considers the remainder worth little, after cutting off the 600 acres, I am instructed to treat for; and, in fact, the whole tract is of small value, except so far as the necessity of the government may give it value, it being mostly barren rock.

Mr. T. has, however, made up his mind to have \$200,000 for it, as he believes the United States desire to and must have it immediately.

From my conversations with him, I am satisfied that is his determination, and I do not think it can be easily shaken. The only inducement which could operate upon him might be the loss of interest upon a large sum.

I shall, however, see him, if possible, again, and write by next mail.

Permit me to suggest an examination as to the propriety of obtaining the consent of this State to the purchase, and a cession of jurisdiction over the land. Our legislature at its last session made provision for purchases by the United States of land for fortifications, &c., and for arbitration to assess its value when an agreement could not be made, but they limited the quantity so to be obtained to fifty acres in any one case.

By the next mail I shall write again.

Believe me, dear sir, with the highest respect, your obd't servant,
P. DELLA TORRE.

Hon. J. B. FLOYD,
Secretary of War, &c., &c.

No. 16.

SAN FRANCISCO, *July 3, 1857.*

SIR: Receipt is acknowledged of your communication of June 2, 1857, in relation to the purchase of land on the north side of the bay of San Francisco, for the United States, from Mr. R. S. Throckmorton, and also of a sketch of said land.

The papers reached me on the 1st instant, and yesterday and to-day I have seen Mr. Throckmorton. As he declines any negotiation, except upon the basis of his own proposition, I shall, according to my instructions, report by this mail to the Secretary of War.

I have the honor to be, very respectfully, your obedient servant,
P. DELLA TORRE.

JOS. G. TOTTEN,
Bvt. Brig. Gen'l and Col. Eng., &c., &c., &c.,
Washington, D. C.

No. 17.

UNITED STATES ATTORNEY'S OFFICE,
San Francisco, July 20, 1857.

SIR: On the 3d instant I had this honor in relation to the contract for the purchase of lands from Mr. S. R. Throckmorton. Since then I have repeatedly seen him, but have been unable to induce him even to enter upon a negotiation upon any other basis than for a sale of the whole tract at his fixed price. He seems to think that the matter of price was virtually settled by your predecessor, the Hon. Jeff. Davis, and that it needed but the appropriation to close the whole business. I have, of course, steadily apprised him that I had no authority to make the purchase in the manner he desires.

It will scarcely be possible to induce him to make any considerable

reduction in his price, he is so firmly under the impression that it has all along been determined that if the land was taken at all it should be at the fixed price of \$200,000. He has addressed me a letter on the subject, and accompanied it with copies of some others which he wrote Colonel De Russy. I enclose copies for your information.

I am still of opinion that the land is of small value apart from the necessities of the government. How far the matter had been settled by Mr. Davis I suppose you can best ascertain in Washington. In connexion with that part, I enclose a copy of a letter received by me on the 18th instant from the Hon. John B. Weller, late United States senator from this State.

In case of any further information reaching me, I shall, of course, apprise you. And, waiting further instructions,

I remain, very respectfully, your obedient servant,

P. DELLA TORRE,
District Attorney.

Hon. JOHN B. FLOYD,
Secretary of War.

No. 18.

SACRAMENTO, *July 17, 1857.*

MY DEAR SIR: I was anxious to have seen you in regard to the purchase of Lime Point, but the multiplicity of my engagements when in San Francisco prevented it. The appropriation of \$300,000 was inserted in the bill on my motion. I expected that \$200,000 would be necessary to purchase the site, and that the remainder would be expended in commencing the work. As it is not probable that the site can be purchased for a less sum, and as time is somewhat important, I hope you may be able to settle the matter without delay. It may be proper to remark that I have no pecuniary interest whatever in this matter, and write simply because I desire to see our bay fortified as soon as possible.

Very truly, your friend,

JOHN B. WELLER.

Hon. Mr. DELLA TORRE.

No. 19.

SAN FRANCISCO, *July 18, 1857.*

DEAR SIR: In accordance with your wishes I herewith hand you copies of my letters to Colonel De Russy, to which I alluded in our last conference, dated October 4, 1855, and April 3, 1856, in reference to, and fixing my price for the land known as "Lime Point" and its vicinity, on the south side of this harbor, and wanted for fortification purposes. In the beginning of my communications with Colonel De Russy upon this subject, my desire and endeavor was to place the price at such a rate only as the value of the land, all things considered,

would fairly justify. I was desirous at the time to make the sale to the government, and I made the price such as, in my best judgment, I thought I ought to receive, and which, I supposed, the government could not reasonably object to paying. I did not fix the value with the idea of extorting from the government an exorbitant sum. Such speculations have never been a part of my business, and I have now no desire that they should be. But I have, I think, a just appreciation of the value of my property, whilst at the same time, as a citizen, I have no wish to see the government funds extravagantly disbursed, even though the money be paid to myself. In this matter, I have for a long time considered the price, viz: two hundred thousand dollars, as at least tacitly settled, for I believe every one connected with the subject here knows how perfectly settled was my valuation of the land. No other view as to the price has ever been entertained or intimated by me; and when, during the session of 1855 and 1856, the appropriation was recommended by Mr. Secretary Davis, it was for that sum of money for that specific purpose; and at the last session of Congress the specific sum (\$200,000) necessary to be paid for the site at "Lime Point" was (as I am informed by ex-Senator Weller, who moved the amendment,) openly debated and plainly understood in the Senate at the time of the passage of the appropriation. In fact, the matter of price I have all along considered as disposed of, and the appropriation of the necessary sum as the only requisite for the immediate completion of the purchase. I can now sell a large quantity of the land at a higher rate than my price as contemplated to the government; and I think that I will be uncontradicted by those acquainted with the subject when I say that the same quantity of land, in the same relative position to any of the large commercial cities in the Union, would bring many times the amount at which I value this. You will please observe that the land commences immediately opposite the city, and extends entirely out to the ocean, covering a water line of about six miles, and embracing all of the northern side of the strait, which, when fortified along the entire front, as at some no distant day it will be, will give the government an uninterrupted line of military jurisdiction seldom to be acquired in the vicinity of large cities.

In conclusion, whilst I am anxious to have the matter brought to a close, I cannot depart from my original price, as I know that it is reasonable, and one that the value of the property fully justifies.

With much respect, I remain your obedient servant,

S. R. THROCKMORTON.

P. DELLA TORRE, Esq.,
San Francisco, California.

No. 20.

SAN FRANCISCO, *April 3, 1856.*

DEAR SIR: In compliance with your request, I have handed to the district attorney for the northern district of the State of California the title papers of my lands at Saucelito, as follows, viz:

"Grant by the Mexican government to Wm. A. Richardson;"

Certificate of survey and juridical possession; "decree of confirmation by the board of land commissioners;" and "decree of confirmation by the United States district court for the northern district of the State of California;" and also, "certified copy of deed of conveyance, (and record of the same,) made by Wm. A. Richardson to me." This presents a clear chain of title in myself, and I, of course, am prepared to make a perfectly clear conveyance of the land. In regard to the subject of my selling to the government a lesser quantity of land than that already offered by me, I would only say that in placing a price upon the tract which I have offered to sell, the matter of quantity was not so much considered as was the locality, as affecting the contiguous lands. In segregating the tract which I have offered to dispose of, it was done in reference to the natural boundaries, of which I was so enabled to avail myself. The balance of the tract in question which would be left is now occupied for light-house purposes, and would also, to an extent, be cut off by the disposal of the lesser quantity. As you are quite familiar with the conformation of all that side of the harbor, I need only call your attention to these facts. In short, I much prefer to make the sale as first offered. inasmuch as the portion designated by you takes up all the land which is of any value to me in that quarter. I would merely add, that the site of the town of "Saucelito," which immediately adjoins the eastern boundary of the tract, was originally sold for the price of four hundred dollars per acre, and looking to the future, as compared with the growth of other cities on the seaboard of the United States, it is quite evident that much of the land in question must very soon attain an equal if not a much higher value.

Most respectfully, I remain, your obedient servant,
S. R. THROCKMORTON.

Colonel R. E. DE RUSSY,
Corps of Engineers, Fort Point, San Francisco.

No. 21.

ENGINEER DEPARTMENT, *Washington, August 1, 1857.*

SIR: I have to acknowledge the receipt of your letter of the 3d ultimo, and also your report of same date to the Secretary of War, in relation to your negotiations with Mr. Throckmorton for the purchase of land for fortifications at and about Lime Point.

In consequence of your suggestion, that application should be made to the legislature of the State for authority to purchase and exercise jurisdiction over this land, instructions have been sent by this mail to Major Z. B. Tower, at San Francisco, to endeavor to obtain such an amendment of the present law as will allow the United States to acquire and exercise jurisdiction over such land as you may purchase under the instructions of the War Department.

Very respectfully, your obedient servant,
JOS. G. TOTTEN,

Brevet Brigadier General and Colonel Engineers.

P. DELLA TORRE, Esq.,
U. S. District Attorney, San Francisco, Cal.

No. 22.

WAR DEPARTMENT,
Washington, August 3, 1857.

DEAR SIR: Yours of the 3d ultimo has been received.

You will please say to Mr. Throckmorton that I will, in a short time, decide whether it will be best for the government to pay him his price for the land on the north side of the bay of San Francisco which he proposes to sell, or to have it condemned by a jury.

I have the honor to be, very respectfully, your obedient servant,

JOHN B. FLOYD,
Secretary of War.

P. DELLA TORRE, Esq.,
United States District Attorney, San Francisco, California.

No. 23.

SAN FRANCISCO, *September 4, 1857.*

DEAR SIR: Colonel Della Torre has communicated to me your message in reference to the purchase of "Lime Point," received by him by the last mail. My object in now writing to you is to inform you that, since the arrival of the last mail, I have been applied to by Mr. H. S. Brown, representing the firm of Brown & Stowe, (attorneys,) of this city, to purchase of me, for account of *parties in Washington city*, the lands at "Lime Point" required by the government for fortification purposes; and for such lands they make me an offer of one hundred and thirty-five thousand dollars (\$135,000) in cash, which offer I declined; and, inasmuch as these gentlemen assert that they have reliable advices from Washington by the last mail that it will be impossible for me to effect the sale of the land in question to the government, (at the price at which I hold it,) I deem it my duty, as well as to my interest, to inform you of the circumstances. Upon the proposal, and the information connected with it, reaching me, I immediately called upon Colonel Della Torre and informed him of the fact, and also authenticated, to his satisfaction, the reality of the proposition, and it is by his advice that I now address you. Throughout this negotiation I have endeavored to deal with the government in a direct business manner, and in the same way that I would operate with an individual. I have placed upon my property a price at which I am willing to sell it, and which I think it is worth. I am engaged in no speculation in the matter, but simply wish to make a fair sale in which the government will be fairly dealt with. But as the parties avow that they wish to purchase the land of me for the purpose of selling it to the government, which they assert *they* can do, and that *I* cannot do, I deem it proper at once to lay these facts frankly before you. The parties in Washington city alluded to I have not been able to ascertain, but they are represented as being respectable. I have no idea of being a

party to any speculation upon the government in this matter, but desire only to occupy the same position as heretofore, namely, to sell my land on my own account, the government paying for it no more than I receive. Regarding the valuation of the land by a jury, I would remark that I would have no particular objection to such a course, provided that *both parties* were equally bound to abide the award. Such a course would necessarily be by stipulation and consent of parties, as the statute of California providing for such cases is limited in its application to fifty acres only, and, from many deficiencies in it, could not be applied to the lands in question. On the whole, I still think that both time and money will be saved to the government by carrying out the terms of the original negotiation.

Craving your indulgence for my great trespass on your patience, I remain your obedient servant,

S. R. THROCKMORTON.

Hon. JOHN B. FLOYD,
Secretary of War, Washington City.

No. 24.

WAR DEPARTMENT,
Washington, October 6, 1857.

SIR: Yours of the 4th ultimo was received this morning, and I proceed, without any delay, to reply to it.

The application you refer to in behalf of "parties in Washington city" who desire to purchase "Lime Point" could have produced no greater surprise with you than it did with me. I had not before heard of any movement here or elsewhere to obtain the property from you in order to sell to the government, and can only say that such a proposition would meet with my unqualified disapproval. As a matter of choice, I would prefer to purchase from the original proprietor, whose fairness would not be so readily suspected as that of persons buying simply for purposes of speculation.

I have entire confidence in Colonel Della Torre, who is fully authorized to act for this department, and I trust that you and he will have no difficulty in coming to an early understanding in regard to the price to be paid by the government for Lime Point.

I am, very respectfully, your obedient servant,

JOHN B. FLOYD,
Secretary of War.

S. R. THROCKMORTON, Esq.,
San Francisco, California.

No. 25.

SAN FRANCISCO, *November 4, 1857.*

DEAR SIR: Your esteemed favor of the 6th ultimo is duly received. I have called upon Colonel Della Torre, and he informs me that he is with-

out any further instructions from you other than those originally given him in reference to the purchase of "Lime Point," which instructions do not authorize him fully to represent your department in that matter. Of the exact nature of his instructions I am, of course, uninformed; but I think you will agree with me that the time has arrived when the clearest understanding should exist between your department and myself upon the subject. Other arrangements and dispositions of the property, or of parts of it, are now open to me; of which, in consulting my interest, I must avail myself in case the department declines to purchase at the price heretofore named by me. Should such be the result, I am satisfied that the government will not be able to acquire the land at so low a rate, and very probably not at all in the clear and undivided condition in which it now is. I regret that there is no way by which I can satisfy you that the purchase cannot be made at a less price excepting by my allowing the appropriation to pass over, when the opportunity will be lost (for some time at least) of completing the most important work of defence in this harbor, and until the title shall become so complicated by the change and multiplication of owners, that a much larger sum in the aggregate will be consumed in extinguishing it.

In view of all this, I hope that you will not consider me impatient in asking your decision upon the matter, as justice to my own interest will require me, unless my proposition shall be accepted, to withdraw it and make the most advantageous disposition of the property to those who are willing to purchase.

With much respect, I remain your obedient servant,
S. R. THROCKMORTON.

Hon. JOHN B. FLOYD,
Secretary of War, Washington City.

No. 26.

UNITED STATES ATTORNEY'S OFFICE,
San Francisco, September 4, 1857.

SIR: Receipt is acknowledged of your communication of August 3, desiring me to inform Mr. Throckmorton that you would in a short time decide upon the course you would adopt as to the land held by him on the north side of the bay of San Francisco; I have accordingly made him the communication.

To-day he has shown me a letter, which he purposes to send by this mail, in relation to an offer made by third parties to purchase the land of him. As he requests me to do so, I further add, that as soon as the proposition was made to him (a day or two since) he promptly informed me of it, and has kept me advised of all proceedings in relation thereto. He will not accept offers from any source until he learns the decision of the department.

Respectfully, your obedient servant,

P. DELLA TORRE,
United States Attorney.

Hon. J. B. FLOYD,
Secretary of War.

No. 27.

UNITED STATES ATTORNEY'S OFFICE,
San Francisco, December 19, 1857.

SIR: On the 16th instant, by last steamer, (November 20,) I had the honor to receive from the department a copy of a letter addressed by you, under date of October 6, to Mr. S. R. Throckmorton, in relation to his land at Lime Point. It is the only communication I have received on that subject from the department since your letter to me of August 4, the receipt of which was acknowledged by me on the 4th of September.

As Mr. Throckmorton still declines to treat upon the basis to which I was limited by my instructions, I am, of course, in the absence of further orders, not authorized to take any action in the matter.

To any directions from the department I shall, of course, give prompt attention.

Respectfully, your obedient servant,

P. DELLA TORRE,
United States Attorney.

Hon. JOHN B. FLOYD,
Secretary of War.

No. 28.

ENGINEER DEPARTMENT,
Washington, January 16, 1858.

SIR: I have the honor to invite your attention to the present condition of the negotiation for the purchase of land for the site for "additional defences for San Francisco, California," for which an appropriation was made by Congress in the act of March 3, 1857.

The position selected by the board of engineers for the Pacific coast as the one which should be first occupied for further defensive works for the protection of the bay and harbor of San Francisco is on Lime Point, on the north side of the entrance to the bay, and opposite Fort Point, where a fort is now under construction.

After the selection of Lime Point as the position first in importance to be occupied, application was made to the reputed owner of the land (Mr. S. R. Throckmorton) by Lieutenant Colonel De Russy, then senior engineer officer at San Francisco, for an offer of terms on which he would sell the requisite quantity to the government. His proposition, dated October 4, 1855, which is herewith, is to sell to the government a tract including the desired site, containing, according to his estimate, from 2,300 to 2,500 acres, for the sum of \$200,000.

Believing this tract to be much larger than was absolutely required for government purposes, the board of engineers was instructed to indicate the tract which would suffice; and on their designating an area of between 500 and 600 acres, and submitting the same to Mr.

Throckmorton, he declined to reduce his price for this smaller tract materially, if at all, below what he originally demanded for the whole, as will be seen by his letter of April 3, 1856, also herewith.

The subject was left in this condition till the 25th of April last, when, an appropriation having been made, a communication was addressed to you from this office, calling your attention thereto, and enclosing a letter from Colonel De Russy, giving his opinion as to the value of the land in question. Basing his recommendation on this opinion of Colonel De Russy, the chief engineer advised that the negotiation should be confided to a lawyer whom he designated, with instructions to purchase, if possible, the smaller tract selected, containing, as was supposed, about 600 acres, for a sum not to exceed \$100,000; or, more exactly, the quantity within those limits being determined by actual survey, at a price not exceeding \$166 66 per acre; or, if such purchase should be impracticable, then to arrange for the whole tract originally offered by Mr. Throckmorton, at a rate per acre not to exceed \$80, the quantity being determined by actual survey. The cost of the entire tract at this rate per acre would amount to \$184,000, assuming Mr. Throckmorton's lowest estimate, viz: 2,300 acres. This estimate, however, is doubtless too large by some 500 or 600 acres.

Upon consideration of this communication you entrusted the charge of making the purchase, on the conditions named, to P. Della Torre, esq., United States district attorney at San Francisco, who, after the negotiations detailed in the several letters herewith, has failed to induce the owner to make any change in his first proposition.

Some further instructions to the district attorney would seem, therefore, to be necessary to secure to the United States the position which it must sooner or later have, in order to defend effectively the entrance to the bay of San Francisco; and it is worthy of consideration whether it would not be better to take immediate steps for obtaining a legal condemnation of the land, or to secure it by purchase at the lowest price Mr. Throckmorton will consent to take, than allow it to fall into the hands of speculators, from whom offers have, according to his statement, been already received by Mr. Throckmorton.

It is proper, however, to say that, in the opinion of Colonel De Russy, the greater part of the tract is of but little present value except for government purposes, and in this opinion he is sustained by the district attorney.

Very respectfully, your obedient servant,

H. G. WRIGHT,
Captain of Engineers, in charge.

Hon. JOHN B. FLOYD,
Secretary of War.

No. 29.

ENGINEER DEPARTMENT,
Washington, January 19, 1858.

SIR: I am instructed by the Hon. Secretary of War to request you to conclude the purchase for the United States of the tract of land on

the north side of the entrance to the bay of San Francisco, for which you have been negotiating under instructions from the War Department, at the lowest price at which it can be obtained, not exceeding that demanded by the reputed owner, Mr. S. R. Throckmorton, viz: two hundred thousand dollars (\$200,000.)

The land in question is the whole tract originally offered by Mr. Throckmorton, and includes all the land lying south of the red dotted lines on the sketch sent you in department letter of 2d June last, embracing an area of between 2,300 and 2,500 acres, according to the estimate of Mr. Throckmorton.

The purchase cannot be actually perfected, and the money paid, as you are aware, till the question of title has been submitted to and approved by the Attorney General of the United States.

In the department letter above referred to, you were authorized and requested to attend to the preparation of all papers necessary to the establishment of the title, and to investing the United States therewith, for submission to the Attorney General.

Your letter of the 19th ultimo to the Secretary of War, in relation to your negotiations with Mr. Throckmorton for the land in question, has been received.

A printed copy of the Attorney General's regulations relative to the preparation of title papers is herewith.

Very, &c.,

H. G. WRIGHT,
Captain of Engineers, in charge.

P. DELLA TORRE, Esq.,
U. S. District Attorney, San Francisco, Cal.

No. 30.

SAN FRANCISCO, *February* 19, 1858.

DEAR SIR: Colonel Della Torre having, since the arrival of the last mail, closed with me the purchase of the land at "Lime Point," on behalf of the government, in accordance with your instructions, I have at his request placed in his hands, to be forwarded to the department, certified copies of all the papers necessary to place my title to the land clearly before you.

The land to be conveyed by me is the entire tract originally offered by me in my negotiations with Colonel De Russy, as laid down upon the map which was forwarded by him to the department, and is on file in your office, and the price agreed upon is two hundred thousand dollars (\$200,000.) Although the title to this land is one of the most perfect and simple character, yet I would remark that no title can be authenticated up to the time of final conveyance by means of an abstract at so remote a distance; and in that view I would respectfully suggest (the general chain of title being satisfactory) that you would authorize Colonel Della Torre to receive the conveyance from me, and make the payments here at the office of record in the county where the land lies, and where, in fact, up to the last moment, the final searches must be made for the protection of the purchaser.

Whilst thanking you for the kind and prompt attention which my letter of September 4 received from you, I would apologize for offering you any suggestions as to the mode of carrying through this conveyance, the speedy completion of which is desirable; but the distance between this point and Washington city is so great that an indefinite length of time may be consumed in correspondence, and still the business not so perfectly and safely done.

With much respect, your obedient servant,

S. R. THROCKMORTON.

Hon. JOHN B. FLOYD,

Secretary of War, Washington City.

[Endorsement.]

ENGINEER DEPARTMENT,

March 17, 1858.

Respectfully referred to the Secretary of War, with the suggestion that it be referred to the Attorney General, to be considered by him in connexion with the letter of Colonel Della Torre, United States district attorney, and the papers enclosed therein, relating to the title to the tract at Lime Point, which were sent to your office yesterday.

H. G. WRIGHT,

Captain of Engineers, in charge.

No. 31.

ENGINEER DEPARTMENT,

Washington, March 16, 1858.

SIR: I transmit herewith a letter under date of 19th ultimo, just received from P. Della Torre, esq., United States attorney at San Francisco, stating that, in pursuance of instructions from the War Department, communicated to him by this office, he has concluded the purchase of the land of Mr. S. R. Throckmorton, lying on the north side of the entrance to the bay of San Francisco, at the sum named, viz: two hundred thousand dollars. The abstract of title and accompanying papers referred to in the letter are also enclosed, and I have the honor to request that the whole may be laid before the Attorney General.

Very respectfully, your most obedient,

H. G. WRIGHT,

Captain of Engineers, in charge.

Hon. JOHN B. FLOYD,

Secretary of War.

No. 32.

WAR DEPARTMENT,
Washington, March 17, 1858.

SIR: I have the honor to submit herewith, and respectfully to request your official opinion as to the validity of the title vested therein, the abstract of title, and accompanying papers, referred to in the letter of P. Della Torre, United States attorney at San Francisco, of land purchased of Mr. S. R. Throckmorton, on the north side of the entrance to the bay of San Francisco.

Very respectfully, your obedient servant,

JOHN B. FLOYD,
Secretary of War.

Hon. J. S. BLACK,
Attorney General.

No. 33.

WAR DEPARTMENT,
Washington, March 18, 1858.

SIR: Referring to my letter to you of yesterday, in relation to the title to land purchased of Mr. S. R. Throckmorton, on the north side of the entrance to the bay of San Francisco, I have the honor to enclose herewith a communication from that gentleman on the subject of its conveyance, and to request your consideration of it in connexion with the letter of P. Della Torre, esq., United States attorney, and the papers enclosed therein.

Very respectfully, your obedient servant,

JOHN B. FLOYD,
Secretary of War.

Hon. J. S. BLACK,
Attorney General.

No. 34.

ATTORNEY GENERAL'S OFFICE,
March 19, 1858.

SIR: I have the honor to acknowledge the receipt of your communication of the 17th instant, referring, for my consideration, certain papers in relation to "land purchased of Mr. S. R. Throckmorton, on the north side of the bay of San Francisco."

I have examined these papers. There is a want of evidence to establish this title:

1. There is no conveyance among the papers by any one to the United States. If the premises were granted by Mexico to Richardson, then a title derived from him is essential to vest it in the govern-

ment. If it never was granted to him, then his grantees or heirs have none to convey, but it belongs to the United States without purchase.

2. The papers furnished do not, under the decision in Cambuston's case, establish title in Richardson, or his heirs or grantees. The abandonment of the appeal by the late Attorney General cannot affect the title until the patent shall be issued on the decree in the case, and no patent appears to have been issued.

3. There is no conveyance from Richardson, the original grantee, to those now claiming the premises, and no evidence of the time of his death, without which it cannot be known under what law, the Mexican or Californian, the descent was cast.

4. It is not shown whether he left a widow or not.

5. The conveyance by the Richardson family is for "the Saucelito Ranch," and for further description reference is made to Mexican grants without date. This does not identify the land.

6. The land as specified by Mr. Della Torre is "Lime Point." There is no evidence of the location of Lime Point showing it to be within the land granted to Richardson, or within that conveyed to Throckmorton.

7. I have not been able to find any statute of California authorizing the deputy county clerk to take the acknowledgment of deeds. The acknowledgment by Mr. Richardson and Mrs. Lowes appears to have been before a deputy clerk.

8. It is not shown that William A. Richardson did not make a will.

9. It is not shown that his estate is settled, so that creditors can have no claims upon his real estate.

10. There is no evidence that there are no existing liens upon the premises by way of deed, mortgage, judgment, taxes, or assessments; on the contrary, the district attorney states that there are incumbrances, although he does not specify them.

11. The claim appears to have been prosecuted in the name of "Guillermo A. Richardson." The decree of the district court bears date February 11, 1857, and the last order on the 2d of April thereafter. There are two affidavits which speak of his death, without stating when he died. The deed to Throckmorton, which seems to be from his children, is dated more than a year before that time, from which it is impossible that said Richardson died before that date. If so, the decree and subsequent proceedings in the case are a nullity.

If the William A. Richardson who joined in the deed to Throckmorton was the original grantee of Mexico, I do not understand why those proved to be his children joined in the deed. But if the "William A. Richardson" who joined in that deed, was a son and heir-at-law of the original grantee, then the affidavits are untrue.

If, however, he was neither the original grantee nor his son and heir, then there ought to be some explanation of his title, or why he joined in the deed.

In the deed to Throckmorton it is stated that a grant was made to Richardson and family. The grant, a copy of which was produced, was to him for "his personal benefit." But if it had been to him and "his family," there is no evidence that the latter have prosecuted their claim or had it confirmed at all.

These several matters require attention before the validity of the title can be certified.

Very respectfully,

J. S. BLACK.

Hon. JOHN B. FLOYD,
Secretary of War.

No. 35.

ENGINEER DEPARTMENT,
Washington, March 24, 1858.

SIR: I have the honor to acknowledge the receipt of your letter of February 19, in which you give notice of the purchase, for defensive purposes, of Mr. Throckmorton's land, on the north side of the entrance to San Francisco bay, for \$200,000.

Your letter and the accompanying papers were immediately forwarded from this office to the Hon. Secretary of War, with a recommendation that they be laid before the Attorney General of the United States. This reference has been made.

Very, &c.,

H. G. WRIGHT,
Captain of Engineers, in charge.

P. DELLA TORRE, Esq.,
*United States District Attorney,
San Francisco, California.*

No. 36.

ENGINEER DEPARTMENT,
Washington, April 19, 1858.

SIR: Under instructions from the War Department, I have the honor to return herewith the papers which accompanied your letter of the 19th February last, relative to the title of the land of Mr. S. R. Throckmorton at Lime Point, entrance to San Francisco bay, California.

These papers have been submitted to the Attorney General of the United States, who, in an opinion dated the 19th ultimo, a copy of which is herewith, points out certain defects in the title proposed to be conveyed thereby, which it is indispensable should be remedied before the validity of the title can be certified by him. The papers are therefore returned to you for that purpose. There is also sent herewith a copy of a letter from Mr. Throckmorton to the Secretary of War, dated the 19th of February, which was considered by the Attorney General in connexion with the other papers in the case.

I have, &c.,

H. G. WRIGHT,
Captain of Engineers, in charge.

Col. DELLA TORRE,
U. S. District Attorney, San Francisco, California.

No. 37.

UNITED STATES ATTORNEY'S OFFICE,
San Francisco, May 20, 1858.

SIR: I have the honor to acknowledge the receipt of your communication of 19th ultimo, in relation to Mr. S. R. Throckmorton's title to the land at Lime Point, which I had been instructed to purchase for the United States. With your communication is also a copy of the opinion of the Attorney General upon the abstract of Mr. Throckmorton's title, which I had furnished you in my letter of February 19.

I think it is very easy to show that the objections have no weight, except so far as attention was called to certain of them in my report, and that they all arise from overlooking certain facts which were set forth in the documents accompanying my letter.

It is to be observed that I distinctly stated it was not my final report upon the title, but that it was to show the deraignment of title which would be offered. It professed to set out the *vendor's* title, so that it might be seen what right he had to make a conveyance. I shall now show how a few simple references to the papers will annul the strictures. For this purpose I shall examine them in their order, as set out in the opinion.

1. "There is no conveyance among the papers by any one to the United States. If the premises were granted by Mexico to Richardson, then a title derived from him is essential to vest it in the government. If it never was granted to him, then his grantee or heirs have none to convey, but it belongs to the United States without purchase."

The abstract did not profess to convey any title to the United States, but only to set out the title which Mr. Throckmorton could convey; it speaks distinctly of land "to be conveyed," not of land thereby conveyed. The approval of Throckmorton's title was a preliminary step before a conveyance from him could be of any value.

2. "The papers furnished do not, under the decision in Cambuston's case, establish title in Richardson or his heirs or grantees. The abandonment of the appeal by the late Attorney General cannot affect the title until the patent shall be issued on the decree in the case, and no patent appears to have been issued."

The Cambuston case alluded to must be a very different one from the case decided at the present term of the Supreme Court, and a copy of which decision was sent me from the Attorney General's office. That was the case of an alleged grant which was still in contest before the courts. In the present instance, the land has been confirmed by the land commission and by this district court; and Mr. Attorney General Cushing having dismissed all further appeal on the part of the United States, the claimant is entitled to his patent, and the government cannot, in good faith, deny it, as soon as his survey is completed and approved.—(See act 1851, ch. 41, sec. 13, 9 Statutes, page 633,) and the opinion thereon of Hon. J. S. Black, Attorney General, to Hon. J. Thompson, Secretary of the Interior, dated September 29, 1857.

At the end of my abstract were carefully noted the precautions

which I suggested should be taken in issuing the patent. But its issuance is a matter of right.

3. "There is no conveyance from Richardson, the original grantee, to those now claiming the premises, and no evidence of the time of his death, without which it cannot be known under what law, the Mexican or Californian, the descent was cast."

This is a mistake. The William A. Richardson who, with his family, convey to Throckmorton is the same Richardson who was the grantee of the Mexican government. This is shown on the face of the papers. I think that this oversight is the cause of most of the objections.

The deed is from William A. Richardson, his wife, and family, to S. R. Throckmorton, of the land known as Saucelito Ranch, and for a description of it refers to a grant of the land by the Mexican government to the *said* William A. Richardson, thus showing that the party executing the deed is the identical person who received the grant. This must have been overlooked. The reference would have been sufficient in an indictment *a fortiori* in an abstract of title.

As the conveyance was made in his lifetime by William A. Richardson, the original grantee from the Mexican government, I saw no object in stating the time of his death, and therefore furnished no evidence of it.

4. "It is not shown whether he left a widow or not."

This can be of no consequence, as his conveyance, in which he was joined by his wife, exhausted his estate and left no claim for his widow. Dower does not exist in California.—(Act April 17, 1850, chap. 103, sec. 10, 1 California Statutes, p. 254.)

5. "The conveyance by the Richardson family is for the Saucelito Ranch, and for further description reference is made to Mexican grants without date. This does not identify the land."

The Saucelito Ranch lies opposite to a portion of the city of San Francisco, and is almost as well known as the city itself. The copy of the grant, with the *diseño* thereto annexed, sent on with the abstract, removes all ambiguity.

6. "The land as specified by Mr. Della Torre is "Lime Point." There is no evidence of the location of Lime Point showing it to be within the land granted to Richardson, or within that conveyed to Throckmorton."

I was instructed to purchase the land shown by a plat furnished me by the War Department. A comparison of the plat and *diseño* will show the identity of the land. To make the matter if possible more clear, I enclose a plat of the entire Saucelito Ranch, with Lime Point designated thereon.

7. "I have not been able to find any statute of California authorizing the deputy clerk to take the acknowledgment of deeds," &c.

Refer to California Statutes: "Each county clerk may appoint one or more deputies, who shall have the same power in all respects as their principal."—(Act April, 1850, chap. 110, sec. 3, 1 California Statutes, p. 262. Compiled Laws Cal., p. 193. Wood's Digest Compiled Laws, p. 88.)

8. "It is not shown that William A. Richardson did not make a will."

9. "It is not shown that his estate is settled, so that creditors can have no claim upon his real estate."

Inapplicable to the facts, inasmuch as William A. Richardson, the original grantee, conveyed by deed.

10. "There is no evidence that there are no existing liens upon the premises," &c.

The abstract did not profess to set out incumbrances; on the contrary, in my report to you I stated there were incumbrances, which, of course, must be cleared off before the title could be completed.

11. "The claim appears to have been prosecuted in the name of Guillermo A. Richardson. The decree of the district court bears date February 11, 1857, and the last order on the 2d April thereafter. There are two affidavits which speak of his death, without stating when he died. The deed to Throckmorton, which seems to be from his children, is dated more than a year before that time, from which it is impossible that the said Richardson died before that date. If so, the decree and subsequent proceedings in the case are a nullity."

The grant certainly was to "Guillermo A. Richardson," but it was the custom in California to translate English christian names into their Spanish equivalents. This runs through all the archives, and perhaps induced the mistake of supposing Guillermo A. Richardson and William A. Richardson to be different persons. There was but one Guillermo or William A. Richardson, the Mexican grantee and the vendor to S. R. Throckmorton.

It is to be observed that although proceedings before the land commission were in the name of Guillermo A. Richardson, yet in the order vacating the appeal by direction of the Attorney General, the name used is William A. Richardson. To this day the Spanish and English christian names are applied indifferently to and by the old British and American settlers.

The decree of the district court bears date February 11, 1856, not 1857, as stated in the objection; but this is immaterial, as the confirmation was to Throckmorton's vendor.

"If the William A. Richardson who joined in the deed to Throckmorton was the original grantee of Mexico, I do not understand why those proved to be his children joined in the deed. But if the 'William A. Richardson' who joined in that deed was a son and heir-at-law of the original grantee, then the affidavits are untrue.

"If, however, he was neither the original grantee nor his son and heir, then there ought to be some explanation of his title, or why he joined in the deed.

"In the deed to Throckmorton it is stated that a grant was made to Richardson and family. The grant, a copy of which was produced, was to him for his personal benefit. But if it had been to him and his family, there is no evidence that the latter have prosecuted their claim or had it confirmed at all."

The William A. Richardson who joined in the deed to Throckmorton was the original grantee, and this appears, as before shown, on

the face of the deed from Richardson and his family to Throckmorton. The reason why his family joined in the deed is simple:

The Mexican grant (a certified traced copy of which was sent you adopted the usual form of such instruments, and recites that the petitioner has asked for the land "*para su beneficio personal y el de su familia*"—"for his personal benefit and that of his family." Now, although this, like most other concessions, goes on to make the actual grant in the singular number to the petitioner, yet there is an idea prevailing to some extent among the old Californians that the family took some interest in the land. Neither the land commission, the district court, nor the Supreme Court of the United States, have ever paid any regard to this supposed interest, but have confirmed the claims to the original grantee in his own name or to his assigns, as the case may be. Whether the wife should join in a conveyance of such property is yet an unsettled question, but prudent men require it, and, with excessive caution, those who are very particular sometimes have demanded that all the family should unite in a deed. Mr. Throckmorton, it seems, adopted this course. It is surely the safest. If the family had no interest, it cannot impair the deed, but is at most superfluous. If they had any, they are barred by their deed; for their interest passed, or they are estopped from asserting it. Instead, therefore, of being an objection, it adds strength to the title.

I have written the foregoing by this mail, that the department and the Attorney General might see at once that no paper emanated from my office full of such gross blunders as are imputed to it in the opinion. By correcting the mistake as to the identity of William A. Richardson, which was shown by the deed to Throckmorton, it will be found there was no difficulty about the title, except such as was pointed out in my abstract and report.

Respectfully, your obedient servant,

P. DELLA TORRE,
United States Attorney.

H. G. WRIGHT,
Captain of Engineers, in charge.

P. S. I enclose the abstract, in order that my explanation may be understood. The other papers I retain for the present.

Abstract of title of land at and near Lime Point, on the north side of the harbor of San Francisco, to be conveyed by S. R. Throckmorton to the United States of America.

The vendor derives title from William A. Richardson, who received a grant of the land from the Mexican government.

It is thus deraigned:

1. 1835, February 18.—Guillermo Ant^o. Richardson petitioned for the land, of which this is a part, and accompanied the petition with a "*diseño*" showing its location.

1838. Juan B. Alvarado, political chief, made the grant to Guil-

lermo Antonio Richardson, a naturalized Mexican, of the lands set forth in the petition and shown by the "diseño."

The above is shown by a traced copy from the original expediente on file in the office of the surveyor general of the United States for California, and certified by him; which paper (accompanied by translations of the originals) is marked in red ink on the back as number one, (No. 1)

2. William A. Richardson filed his claim before the board of land commissioners, and it was confirmed.

1856, February 11.—On appeal to the district court, the decision of the board was affirmed, and the claim of Richardson was confirmed to the tract.

1857, April 2.—In pursuance of directions from the Hon. C. Cushing, Attorney General, further appeal was vacated, and the decree of the district court confirming the claim was ordered to stand as the final decree.

Above is shown by certificate of John A. Monroe, clerk of the United States district court, by his deputy W. H. Chevers; which is marked in red ink on the back as number two, (No. 2.)

3. 1856, February 9.—William A. Richardson, Maria A., his wife, Steven Richardson, their son, Manuel Torres, their son-in-law, and Mariana, his wife, daughter of William A. and Maria A. Richardson, bargained, sold and quit-claimed to Samuel R. Throckmorton the land described in above recited grant, excepting and reserving the tract of land theretofore conveyed by said Richardson to one Parker, and also the tract previously conveyed to said M. Torres and wife by said Richardson, containing about eight acres. These reservations are said to be not within the tract to be conveyed to the United States.

1856, February 19.—William A. Richardson, Steven Richardson, and Manuel Torres acknowledged the deed before L. W. Sloat, notary public in San Francisco.

March 15.—Maria Antonia Richardson, wife of said William A. Richardson, and Mariana R. Torres, wife of said Manuel Torres, acknowledged the deed upon examination before Daniel T. Taylor, clerk of Marin county, by A. B. Harris, his deputy clerk.

Recorded in county of Marin, wherein the land lies.

Above shown by copy certified by Daniel T. Taylor, recorder for Marin county, which is marked on the back in red ink number three, (No. 3.)

4. Affidavits to show that Stephen Richardson and Mariana Torres were the only children of William A. Richardson. Marked on back number four, (No. 4.)

I also enclose a letter from Mr. S. R. Throckmorton to myself.

These papers are only preliminary to my general report on the title, and to advise the department of the chain of title which will be offered.

Some care must be taken when the patent for the whole ranch issues to Mr. Throckmorton. Either the patent should precede the conveyance from Mr. Throckmorton, or if it issue afterwards, the land he conveys must be excepted from the patent. If, after his conveyance to the United States, a patent were to issue to him for the whole tract, it might cause confusion. In law it might be a re-conveyance of the

fee ; and even although it could be corrected in equity, of course it will be better to prevent the difficulty which might possibly arise.

P. DELLA TORRE,
United States Attorney.

SAN FRANCISCO, *February 20, 1858.*

No. 38.

ENGINEER DEPARTMENT,
Washington, June 15, 1858.

SIR: Your communication of the 20th ultimo, with the papers therein referred to concerning the title of Mr. S. R. Throckmorton to land at Lime Point, which you had been instructed to purchase for the United States, has been received and referred to the Secretary of War.

Very, &c.,

H. G. WRIGHT,
Captain of Engineers, in charge.

P. DELLA TORRE, Esq.,
United States Attorney, San Francisco, California.

No. 39.

SAN FRANCISCO, *June 19, 1858.*

SIR: By the last mail I received intelligence through Colonel Della Torre that the completion of the purchase of "Lime Point" is suspended. I had hoped that this matter was concluded when Colonel Della Torre, in February, made the purchase under the instructions received by him about that time. But I find that I am still to be annoyed by the persistent endeavors of those who, from interested motives, strive to thwart this measure, and I assure you that I am correct when I assert that the sudden and determined attack made upon it originates in no honest motive. I do not know whether this matter will be disposed of before this reaches you or not, but in any event it is proper, in view of what I owe to myself, and in common justice to others, that I should not remain silent upon the subject. The newspapers which will reach Washington by this mail contain so many gross attacks upon the sale that I find it my duty to refute them. In the first place, the value placed upon the land in question by Mr. Broderick, in the Senate, is too absurd to need comment, and only goes to prove that human character is more frequently unmasked by trifles than by great events. To meet his assertion I enclose you the letter of Mr. John Parrott, the wealthiest banker in this city, and a gentleman well known in Washington, which letter will show you at what value this "seven thousand dollar property" was held long before any idea existed of its being wanted for government uses, and the records of Marin county will show that after Mr. Richardson refused the sum therein named, he was enabled to effect loans upon mortgage upon the property amounting to over one hundred and thirty thousand dollars.

I bought the rancho of him with those incumbrances upon it. I would respectfully call your attention to the fact that I sought not this sale to the government. I was called upon as early as October, 1855, by Colonel De Russy, and desired to set a price upon it. I did so, after mature reflection, and have not since seen any reason to change my views of its value.

The attack upon the sale in the Senate is *here* extended into a villification of the motives of Senators Weller and Gwin in reference to the appropriation which was made for the purpose. But here I find myself in a position which it is a pleasure to me to occupy, for it enables me to put to rest and silence one of the foulest slanders that could be uttered against a man, much more against senators of the United States. Party newspapers have paraded it, or I would long hesitate to allude to it. I allude to charges and insinuations which have been made to the effect that the honorable senators had advocated the measure from improper and interested motives. On this subject I will only say, that with neither of them have I had any communication, directly or indirectly, upon this matter until long after the appropriation was made, nor since, in any way affecting the application of the same, further than a constituent has a right to ask of a representative of his State. I mean this disclaimer to be taken in its broadest sense and strictest application, and I challenge from any and every quarter the most searching investigation. I will further add, that I had no personal acquaintance with those gentlemen until quite lately, and even that will scarcely exceed a mere introduction.

I must apologize for troubling you with this letter, but I do not write it on my own account; the sale of the land may take care of itself; but I despise falsehood and slander, no matter whence it may emanate, and would be most happy to have the whole matter investigated.

With much respect, your obedient servant.

S. R. THROCKMORTON.

Hon. JOHN B. FLOYD,
Secretary of War, Washington City.

No. 40.

SAN FRANCISCO, June 19, 1858.

In reply to your inquiries relating to the rancho of Saucelito, I have to inform you that in January, 1854, I offered for that property one hundred thousand dollars, which was refused by the then owner, W. A. Richardson.

Respectfully, your obedient servant,

JOHN PARROTT.

S. R. THROCKMORTON, Esq., *Present.*

No. 41.

UNITED STATES ATTORNEY'S OFFICE,
San Francisco, June 19, 1858.

SIR: By last mail I received your letter of May 14, requesting copies of all letters addressed me from the department in relation to negotiations for the purchase of Lime Point.

I have now the honor to enclose them, as requested, in this and another package.

Respectfully, your obedient servant,

P. DELLA TORRE,
United States Attorney.

W. R. DRINKARD, Esq.,
Chief Clerk War Department.

No. 42.

UNITED STATES ATTORNEY'S OFFICE,
San Francisco, June 19, 1858.

SIR: I have the honor to acknowledge receipt of your communication of May 17, directing me to stop all proceedings in relation to the purchase of land for the United States on the north side of this harbor. I have of course complied with the instructions.

By this mail I send to Mr. Drinkard, chief clerk, copies of all the papers on this subject sent me from the department.

As the propriety of the purchase has been very much questioned here, I request that the department would give me leave to publish all the correspondence held with this office. I do not like to do so without first making this application.

Very respectfully, your obedient servant,

P. DELLA TORRE,
United States Attorney.

Hon. JOHN B. FLOYD,
Secretary of War.

[Endorsement.]

ENGINEER DEPARTMENT, *July 31, 1858.*

Respectfully returned to the Hon. Secretary of War.

Should it be decided to authorize District Attorney Della Torre to publish the correspondence held with his office on the subject of the purchase of the site at Lime Point, I would suggest that it be with the condition that all his letters to the War Department and this bureau, other than those having exclusive reference to the title, be included in the publication.

H. G. WRIGHT,
Captain of Engineers, in charge.

WAR DEPARTMENT,
Washington, May 17, 1858.

SIR : In consequence of the opposition of the Hon. David C. Broderick, senator from California, to the proceedings of the War Department having for their object the purchase of Lime Point for a site for fortifications, and being induced to believe, from his representations in the Senate of the United States, that a gross extortion is contemplated by the holder of that property, I have determined to suspend all negotiations for its purchase. You will, therefore, stop all proceedings on your part, and return all the papers connected with the transaction to this department, together with your own instructions.

Very respectfully, your obedient servant,

JOHN B. FLOYD,
Secretary of War.

P. DELLA TORRE, Esq.,
U. S. Attorney, &c., San Francisco, California.

No. 43.

SAN FRANCISCO, *July 19, 1858.*

SIR: I must again ask your indulgence in bringing to your notice the uncompleted sale of the land at "Lime Point." I feel that I am placed in an embarrassing position in this matter, and that if I am silent my interest must suffer, as well as the affair become more complicated and difficult. I feel certain that this sale and the circumstances attending it do not stand in the right position before you. As I understand it, the purchase has been fairly made by the government, and that I am entitled by all the rules of business to the payment of the price agreed upon. I am prepared to give a clear and strictly unobjectionable title to the land. I have placed in the hands of Col. Della Torre, some time since, complete releases and discharges of every and all incumbrances which were upon the rancho of "Sausalito," with the single exception of one which is in litigation, which one I can remove at a moment's notice, and cannot, in any event, be a bar to my making a clear title to the particular tract sold the government. I regret that the facts in this case cannot be brought before you so clearly as they should be. This negotiation has already cost me much pecuniary loss. I have kept my property tied up, and every other use of it suspended for nearly two and a half years, and now find that a plain business transaction is placed between the upper and nether millstones of a political quarrel. You must excuse my plainness, but I must write frankly or I cannot place the truth before you. I am beset by speculators, and the whole gist of the opposition arrayed against this purchase has its origin in a settled determination to deprive me of a portion of the proceeds of this sale; and which I shall most firmly resist. I am without any advices from the department, and consequently cannot anticipate its conclusions; but in the absence

of such advices I have concluded to consider the sale as made until I can have the honor of hearing from you. My principal object in intruding this letter upon you is to counteract any and all attempts which may be made to deceive or mislead the department, and in that view I will only say that I am the sole owner of the land in question, and that I or my heirs will remain so until I or they shall sell it, and under no circumstances can it be bought at a less price. You will do me a great favor by communicating with me upon the subject, and if you decide upon completing the purchase by placing the entire matter of the title in the hands of your agent here, where he can have immediate access to the records. I must ask you to excuse the manner of my handling this subject, but I feel that I am not placed in the fair and just position which I am entitled to occupy, which I am satisfied would not be the case were the department entirely acquainted with the facts.

With much respect, I remain your obedient servant,
S. R. THROCKMORTON.

HON. JOHN B. FLOYD,
Secretary of War, Washington City.

No. 44.

ENGINEER DEPARTMENT,
Washington, August 31, 1858.

SIR: I have the honor to acknowledge the reference to this office for report of the letter of the Hon. Secretary of State, enclosing a communication from William H. Newell, editor of the "San Francisco Times," wherein the latter asserts that the tract of land known as Lime Point was reserved as a site for military purposes under both the Spanish and Mexican governments, and, consequently, that the title thereto properly rests in the United States, and that he is ready to put the agents of the United States in the way of obtaining the information which will substantiate this allegation.

There is nothing in this office going to show that the tract referred to was ever reserved for military purposes by either the Spanish or Mexican governments; but all the papers on the subject would tend to prove that the title is now in private hands, founded on a grant from the Mexican authorities.

As a brief history of this claim, as it is understood from the papers on the files of this office, may assist you in judging whether the allegation of fraud in the original grant should be investigated, and how far it ought to be carried, I proceed to give it:

In November 6th, 1850, the President of the United States, on the recommendation from this office, based on the reports of the joint commission of naval and engineer officers which examined the Pacific coast, reserved from sale several tracts of land in California on the supposition that they were public property, and amongst them the locality known as Lime Point. Subsequently, on the establishment of the commis-

sion authorized by the act of March 3, 1851, a claim was presented to a large tract of land, including this latter reservation, by William A. Richardson, who based his claim on a grant from the Mexican governor bearing date as far back as 1838. This grant was confirmed by the commission, and an appeal taken by the United States to the district court, as provided by law, which court confirmed the decision on the 11th February, 1856. An appeal was again taken by the United States to the Supreme Court, and notice thereof sent to the Attorney General, Mr. Cushing, who, for reasons not stated in any papers to which I have access, directed the appeal to be vacated. This was accordingly done, and the district court thereupon declared its decree final on the 2d April, 1857.

On the 9th February, 1856, two days before the date of the decree of the district court, William A. Richardson, the original grantee, with his wife and children, sold and quit-claimed to S. R. Throckmorton, the present claimant, the land described in the grant with certain specified reservations, which do not appear to be within the tract since proposed to be purchased by the United States; and on the 19th of the same month the deed was acknowledged by Richardson, his son, and son-in-law, and on the 15th of March following by the remainder of the family.

From the foregoing abstract, most of which is derived from the reports of the United States district attorney, it would seem that the title to the land is legally and equitably in the present claimant, unless it can be overturned by proof of the reservation of the whole or a part of the tract by the Mexican government. And even if this alleged reservation be susceptible of proof, it still remains to consider whether an appeal can yet be taken to the Supreme Court of the United States, or whether the confirmation of the claim by the district court after the vacation of the first appeal is not final. These are questions upon which it might be well to obtain the opinion of the Attorney General, who probably has in his office the history of the proceedings before the land commission and the district court. The law of 1851, before referred to, provides "that the final decrees rendered by the said commission, or by the district or Supreme Court of the United States, or any patent to be issued under this act, shall be conclusive between the United States and the said claimants only, and shall not affect the interests of third persons."

It is proper to remark that at the time the district attorney investigated the title of Mr. Throckmorton to the land in question, no patent had been granted him, and it is possible that it has not yet been issued, though it is not certain that the fact of non-issue is material to the question of title, inasmuch as the law of 1851, section 13, makes this issue a matter of right to the claimant, on his presenting proof of final confirmation, and complying with the specified requirements.

Should it be decided that the case can be re-opened, I would respectfully suggest that instructions to that effect, and to examine into the allegations in Mr. Newell's letter, be promptly given to the proper officer of the government. Very, &c.,

H. G. WRIGHT,

Captain of Engineers, in charge.

Hon. JOHN B. FLOYD, *Secretary of War.*

No. 45.

POTTSVILLE, PENNSYLVANIA,
September 14, 1858.

DEAR SIR: In behalf of S. R. Throckmorton, esq., of San Francisco, I write to inquire whether any difficulty still exists in the way of the government at once closing the agreed for purchase from him of "Lime Point," (embracing about seven miles of water front,) intended for a fortification?

It is quite important to Mr. Throckmorton that pending negotiations be at once terminated, and my instructions lead me to infer that he is compelled to effect this result during the present month. The price (\$200,000) Mr. Throckmorton insists is very low, and much lower than others who have been trying to get the control of the property would have demanded for it, had they succeeded in effecting that object. Mr. T.'s position, in reference to some \$140,000 he owes upon the property, seems to be such that he must make at once a final disposition of his negotiations with the government, and, in the event of no sale, look to other expectant buyers. If you will advise me per mail that the matter may be at once closed, I will, in behalf of Mr. Throckmorton, go forthwith to Washington and aid in arranging for that end. As to myself, I beg to refer you to Governor Bigler, (if at Washington,) General Cass, or President Buchanan.

Your obedient servant,

F. W. HUGHES.

Hon. JNO. B. FLOYD,
Secretary of War.

No. 46.

WAR DEPARTMENT,
Washington, September 16, 1858.

SIR: In reply to your letter of the 14th instant, I have the honor to state that the proceedings in relation to the purchase of Lime Point were entirely discontinued in consequence of declarations made by a senator from California on the floor of the Senate, that the whole transaction was an effort to impose upon the government, and a swindle.

Very respectfully, your obedient servant,

JOHN B. FLOYD,
Secretary of War.

F. W. HUGHES, Esq.,
Pottsville, Pennsylvania.

Rep. No. 389—4

No. 47.

WAR DEPARTMENT, *December 7, 1858.*

SIR: I have to acknowledge the receipt of your communication of the 18th of August last, covering a letter addressed to you by Mr. William H. Newell, of San Francisco, in relation to the title to a tract of land near that city, known as Lime Point, proposed as the site for a fort.

I have now the honor to transmit a report on the subject, from the officer in charge of the Engineer Bureau, and to inform you that, in accordance with the suggestion contained in that report, I have referred the matter to the Attorney General for his opinion on the legal questions therein presented.

Very respectfully, your obedient servant,

JOHN B. FLOYD,
Secretary of War.

Hon. LEWIS CASS,
Secretary of State.

No. 48.

WAR DEPARTMENT, *December 7, 1858.*

SIR: I transmit herewith, for your official opinion on the legal questions therein presented, a report from the officer in charge of the Engineer Bureau respecting the title to the tract of land near San Francisco, California, known as "Lime Point," proposed as the site for a fort, together with the letter from the Secretary of State, and its enclosure therein referred to.

Very respectfully, your obedient servant,

JOHN B. FLOYD,
Secretary of War.

Hon. J. S. BLACK,
Attorney General.

IN THE SENATE OF THE UNITED STATES.

FEBRUARY 26, 1859.—Ordered to be printed.

Mr. CLAY submitted the following

REPORT.

The Committee on Pensions, to whom was referred the memorial of Thomas Watts, of Alabama, praying to be allowed arrears of pension, have instructed me to report :

That the petitioner was a soldier of the war of 1812; was wounded in the battle of Kalebee Swamp, in the then Territory of Alabama, in 1814, by a rifle ball in the left thigh, which he carries in his body at this day; that he did not apply for a pension till 1850, because he was able to live without it; was pensioned 21st August, 1852, by virtue of the law of 24th April, 1816, at the rate of \$8 per month.

He prays for arrears of pension from the 24th April, 1816, (when the act by which he was pensioned was approved,) to 21st August, 1852, a period of thirty-six years and four months, amounting to \$2,888.

The petition is based upon the ground that he *might* have drawn a pension from 21st April, 1816; that others did so who had not better or as good claims on the bounty of the government; and that he only refrained from doing so because he did not need it, and, like a good patriot, lived as long as he could on his own means, disdaining to ask a pension.

Admitting the grounds on which this application is based, the committee do not deem them sufficient to warrant the granting of the arrears now claimed. By general laws, re-enacted time and again, and now in full force on the statute-book, no one is *entitled* to a pension till he has completed and filed his testimony, and established his claim, at which time his pay shall begin, and not sooner. Hence no pension begins from the date of the law allowing it, unless that law expressly provides that it shall begin at that time. The act of 24th April, 1816, does not make such provision, and to grant this, as asked by Mr. Watts, would be in violation of the general law and the practice of the pension bureau. That he refrained from asking it till constrained by his necessities, is creditable and praiseworthy, but does not entitle him to the pecuniary reward he seeks. The government

does not pay invalid soldiers for their patriotism or other moral qualities, but for their loss and injury in the public service.

Again, the law does not create any *vested right* to a pension. It only promises a pension when the soldier asks it and proves his case to come within its provisions. No matter how great his service, he cannot obtain a pension until he asks it and sustains his petition by sufficient proof.

Many fail in their applications for want of sufficient proof, and only succeed after oft-repeated trials to complete their proof. That some have obtained arrears of pension is no better argument for any one than for all applicants of the same class. Such cases are exceptions to the general law. If the general law is right and expedient, it should be enforced; if wrong, it should be repealed, and all pensions should begin from the date of the law under which they are claimed. To grant all such claims as that of the petitioner would be to increase the demands on the treasury far beyond its receipts, or, indeed, the present resources of the government. The exceptions to the general rule cited by the petitioner furnish no reason for multiplying them, but rather admonish us to maintain it more strictly in future. The committee will not review these exceptions, notwithstanding they think they could show they are not in point. Not one of them is entirely analogous to that of the petitioner.

In conclusion, the committee agree unanimously that there is nothing in Mr. Watts' case that is peculiar or extraordinary. Such cases are constantly presented, and are almost invariably refused. They cannot, without violating a general law, sound principle, and public interest, recommend that the prayer of the petitioner be granted. They have therefore instructed me to report adversely.

IN THE SENATE OF THE UNITED STATES.

MARCH 2, 1859.—Ordered to be printed.

Mr. PEARCE submitted the following

REPORT.

The Committee on the Library, to whom was referred the following resolution of the Senate: "Resolved, That the Committee on the Library be instructed to report what progress has been made towards the completion of the publications of the exploring expedition under Captain Charles Wilkes; how much of the moneys appropriated therefor remain unexpended; how much more, if any, will be required for the completion of the same, with such detailed statements as may furnish the Senate with full information on the subject," report:

That the act of August 26, 1842, directed that there shall be published, under the supervision of the Joint Committee on the Library of Congress, an account of the discoveries made by the exploring expedition under the command of Lieutenant Charles Wilkes, of the navy, which account, it was directed by the same act, should be published in a form similar to the Voyage of the Astrolabe, lately published by the government of France. Under this law, before any one of the present committee had been appointed a member of it, the form and plan were determined on, the publication commenced, and five volumes of the narrative and two of the scientific works were published. The estimates of the expense of completing the work according to the original plan have been, from time to time, increased, as the scientific men employed in preparing the memoirs have discovered that the collections were more numerous and contained more specimens of new objects in natural history than had been before supposed to be included in them. The specimens of natural history were numerous, far exceeding in amount and variety those of any European expedition, or, indeed, the aggregate of several of them; and the plan of the committee originally charged with the publication contemplated the description, by eminent scientific men, of all that was new in these large and varied collections. The illustrations, demanded by the act of Congress, the same committee considered it their duty to have prepared in the finest style of art. All this was necessarily very expensive, and the expense has been increased by the necessity

of rewriting two of the works, which had not been adequately prepared, in the opinion of the committee, in which opinion they were confirmed by persons of the highest information in these specialties, whose advice the committee sought and obtained.

In 1855 the last appropriation was made by Congress of \$29,320, which the committee then supposed would suffice to complete these works; but they were informed, soon after the appropriation was made, that it would not be adequate to this purpose. They then endeavored to circumscribe the work by limiting the number of drawings and plates and abbreviating the text; but they have found it impossible to effect this purpose. The manuscripts have been more voluminous than they expected; the illustrations, also, and the cost of these latter has proved beyond their estimate. The committee subjoin, as part of this report, a statement prepared under direction of the committee by Mr. Frederick D. Stuart, who is assistant to Captain Wilkes in superintending the publications, and also a report from Captain Wilkes to the Committee on the Library. These papers present detailed statements of the expenditures in the publications and show the whole amount expended up to this time; the funds remaining on hand, and the amount necessary to complete the whole work. They show what portions of the publications are complete; what are printed but unbound, in whole or in part; what are written but not printed, and what manuscripts are incomplete. Up to this time the cost of publication has been \$279,131. The funds on hand are \$4,480 90.

To complete the publication of all the works and illustrations will require \$35,146 15. To replace the works destroyed by the fire in the Capitol and the fires in Philadelphia, not yet replaced, will require \$10,766; and the authors employed in writing the memoirs on the natural history will have just claims, some of them on definite contracts, which will require about \$6,000; while the contingent expenses, including pay of Captain Wilkes' assistant, charged with superintending the execution of the printing, engraving, coloring, &c., rent of office and fire-proof, &c., will be about \$5,500.

The committee subjoin papers marked A and B, respectively, as parts of this report.

A.

Statement of the condition of the publication of the results of the exploring expedition.

Narrative, by Captain Wilkes, vols. 1, 5, and atlas; 25 copies destroyed by fire, but replaced; 100 copies with atlas complete.

Philology, by H. Hale, vol. 6, no atlas; 25 copies destroyed by fire, but replaced; 100 copies complete.

Zoophytes, by J. D. Dana, vol. 7, and atlas; 25 copies destroyed by fire, but replaced; 100 copies with atlas complete.

Ornithology and Mammalogy, by John Cassin, vol. 8, and atlas; 18 copies text and atlas in sheets, ready for binding; 82 copies with atlas complete.

Races of Men, by Dr. Pickering, vol. 9, no atlas; 30 copies destroyed by fire, to be replaced; 70 copies complete.

Geology, by J. D. Dana, vol. 10, and atlas; 30 copies text and atlas destroyed by fire, to be replaced; 70 copies with atlas complete.

Meteorology, by Captain Wilkes, vol. 11, no atlas; 30 copies destroyed by fire, to be replaced; 70 copies complete.

Mollusca, by A. A. Gould, vol. 12, and atlas; 21 copies text destroyed by fire, to be replaced; 95 copies atlas nearly ready for binding; 79 copies text and five copies atlas complete.

Crustacea, by J. D. Dana, vol. 13, and atlas; 21 copies each and atlas destroyed by fire, to be replaced; 79 copies each and atlas complete.

Crustacea, by J. D. Dana, vol. 14, and atlas; 79 copies each and atlas complete.

Botany, by A. Gray, vol. 15, and atlas; 21 copies text destroyed by fire, to be replaced; 18 copies atlas in sheets, ready to be bound; 79 copies text and 82 copies atlas complete.

Ferns, by W. D. Brackenridge, vol. 16, and atlas; 24 copies text and atlas destroyed by fire, to be replaced; 76 copies text and atlas complete.

Botany, by J. Torrey, W. S. Sullivant, E. Tuckerman, J. W. Baily, and M. A. Curtis, vol. 17, and atlas, containing 55 plates; MS. nearly ready; 55 plates finished.

Botany, by A. Gray, vol. 18, and atlas, to contain 100 plates; MS. nearly ready; 19 drawings made.

Geography of Plants, by Dr. Pickering, vol. 19, no atlas; MS. complete; maps made.

Herpetology, by S. F. Baird, vol. 20, and atlas; 18 copies text and atlas in sheets ready to be bound; 82 copies text and atlas complete.

Ichthyology, by L. Agassiz, vol. 21, and atlas; MS. nearly ready, drawings nearly finished.

Ichthyology, by L. Agassiz, vol. 22, and atlas; MS. nearly ready, drawings nearly finished.

Hydrography, by Captain Wilkes, vol. 23, and 2 atlases of charts; text nearly all printed; 30 copies No. 1 atlas destroyed by fire, to be replaced; 18 copies No. 2 atlas in sheets, ready to be bound; 79 copies

No. 1 atlas and 82 copies No. 2 atlas complete.

Physics, by Captain Wilkes, vol. 24, no atlas; MS. in progress.

Making in all 24 vols. text and 14 atlases, not including the atlas to the Narrative.

Volume 8, by T. R. Peale, and 18, of 48 plates, prepared for the atlas, were rejected.

Cost of publication to January 31, 1859, including pay

for superintendent and contingent expenses - - \$279,131 74

The funds have been expended as follows:

Preparation at office	-	-	-	\$30,884 03
Dr. Charles Pickering, pay	-	-	-	9,654 41
James D. Dana, pay, vols. 7, 10, 13, and 14	-	-	-	16,200 00
T. R. Peale, pay, (vol. 8 rejected)	-	-	-	6,840 00
William Rich, pay on botany (not used)	-	-	-	4,560 00
H. Hale, pay, vol. 6, including editing	-	-	-	2,158 00
S. F. Baird, services, vol. 20	-	-	-	1,000 00
John Cassin, services, vol. 8	-	-	-	2,999 93
A. A. Gould, services, vol. 12	-	-	-	3,210 00
Prof. L. Agassiz, services, vols. 21 and 22	-	-	-	5,916 66
Prof. A. Gray, services, vols. 15 and 18	-	-	-	5,400 00
Prof. A. Gray, services on vol. 16	-	-	-	100 00
William D. Brackenridge, services, vol. 16	-	-	-	250 00
Dr. John Torrey, services on vol. 17, botany	-	-	-	350 00
E. Tuckerman, services on vol. 17, botany, lichens	-	-	-	560 00
J. W. Baily, services on vol. 17, botany, algæ	-	-	-	600 00
M. A. Curtis, services on vol. 17, botany, fungi	-	-	-	100 00
J. L. Leconte, coleoptera	-	-	-	150 00
C. T. Jackson and Professor Silliman, analysis	-	-	-	1,100 00
Drawing Natural History subjects	-	-	-	6,933 50
Engraving Natural History plates	-	-	-	41,189 13
Engraving Narrative and other plates	-	-	-	16,808 71
Engraving charts and maps	-	-	-	24,810 85
Lettering chart and Natural History plates	-	-	-	1,634 22
Lithography for vol. 10, Geology	-	-	-	824 93
Wood cuts for Narrative and other volumes	-	-	-	3,067 04
Plate printing, charts, maps, and Natural History	-	-	-	3,073 23
Coloring Natural History plates and maps	-	-	-	2,733 61
Paper, letter press, and plate	-	-	-	8,889 53
Printing text of all the works	-	-	-	20,633 27
Binding text and atlas of all the works	-	-	-	11,068 14
Superintendent's pay, Mr. Drayton	-	-	-	28,147 69
Contingent expenses, including rents	-	-	-	15,987 36
Works purchased to replace those destroyed by fire	-	-	-	1,297 50
As above	-	-	-	\$279,131 74

Of this amount \$16,714 95 was charged to the fire fund—

Leaving to the credit of the fire fund	-	-	-	\$2,790 26
And to the credit of the general fund	-	-	-	1,690 64
				<hr/>
Total on hand	-	-	-	4,480 90
				<hr/> <hr/>

Which will be sufficient to finish atlas to vol. 12 and vols. 23 and 24.

In addition to the amount on hand, there will be required to complete the publication of all the works of the Exploring Expedition, the estimate based upon present knowledge of cost of work and materials:

For vol. 17, Botany, text and atlas, 55 plates, 82 copies,	\$1,917 05
For vol. 18, Botany, text and atlas, 100 plates, 82 copies,	9,051 50
For vol. 19, Geography of Plants, text and 4 maps, 82 copies,	2,500 00
For vols. 21 and 22, Ichthyology, text and 2 atlases, 82 copies	19,780 60
To bind, &c., 18 copies each of the following works, the previous estimates having been made for only 82 copies each, viz: vol. 8 and atlas; atlas to vol. 12; atlas to vol. 15; vol. 17 and atlas; vol. 18 and atlas; vol. 19 and 4 maps; vol. 20 and atlas; vol. 21 and atlas; vol. 22 and atlas; vol. 23; vol. 24; and vol. 2 atlas of charts	1,897 00
	<hr/>
	35,146 15

Required to reprint and bind the following works, destroyed or missing, to make up 100 copies: vol. 9, Races of Men, 30 copies of text; vol. 10, Geology, 30 copies of text and atlas; vol. 11, Meteorology, 30 copies of text; vol. 12, Mollusca, 21 copies of text; vols. 13 and 14, Crustacea, 21 copies each and atlas; vol. 15, Botany, 21 copies of text; vol. 16, Ferns, 24 copies of text and atlas; vol. 1 of Charts, 30 copies, -	10,766 00
	<hr/>

Making in all - - - - - 45,897 15
which does not include pay due, or which may be due, authors and others, salaries, and contingent expenses.

It is proper to remark that the expense attending the reprinting of volume 8, and engraving new plates for the atlas, added at least \$8,000 to the cost of publication. Besides, when the work was commenced it was only contemplated to have 18 volumes of text and 11 atlases, making in all 29 volumes. The addition of 6 volumes of text and 3 atlases, made necessary by the discovery of the fact that a larger number of specimens or subjects required description, has added to the expense of publication full as much as the sum now asked to complete the work.

Again, at the time the estimates were made for engraving, &c., the

price for labor and materials was at least 25 per cent. less than it was but a few years afterwards.

Recapitulation.

Amount required to finish the works in progress, 100 copies each - - - - -	\$35,146 15
To replace works destroyed by fire - - - - -	10,766 00
Indebtedness for scientific services, &c., contingent expenses and salaries - - - - -	

B.

WASHINGTON CITY, *January 3, 1859.*

SIR: The following statement of the progress and present condition of the publication of the work of the Exploring Expedition is respectfully submitted:

On the 1st of January, 1858, there was to the credit of the Exploring Expedition:

General fund - - - - -	\$10,558 05
Fire fund - - - - -	11,226 15
	<hr/>
	21,784 20

The works completed during the present year are as follows:

100 copies of vol. 8, Mammalogy and Ornithology, have been printed; 82 copies of text have been bound and delivered.

100 copies of atlas to vol. 8, containing 53 plates, printed and colored; 82 copies of which have been bound and delivered.

100 copies of vol. 20, Reptilia and Herpetology, have been printed; 82 copies of text have been bound and delivered.

100 copies of atlas to vol. 20, containing 23 plates, have been printed and colored; 82 copies of which have been bound and delivered.

100 copies of 2d vol. Hydrography, containing 105 charts, have been printed; 82 copies have been bound and delivered.

100 copies of atlas to vol. 12, Mollusca, containing 52 plates, have been printed; 100 of 23 plates have been colored, leaving 100 of the remainder (29) to be colored.

The MS. of vol. 17 is ready for press.

44 plates for the atlas to vol. 17, Botany, have been engraved this year, 8 had been finished before, leaving 3 to be engraved, making 55 plates in all.

The MS. of vol. 18, Botany, by Prof. Gray, has not yet been handed in, but it is ready for the press. The volume will be large and valuable.

The atlas to vol. 18, Botany, is designed to contain 100 plates; 24 plates have been engraved, 26 drawings are finished, and 50 remain yet in hand to complete. This will give 76 plates to be engraved; no engravings have been made from the want of funds.

The MS. to vol. 19, Geography of Botany, by Dr. Pickering, with

four maps, has been delivered to me. It will form a large and valuable volume of text.

The MS. of vols. 21 and 22, Ichthyology, by Prof. Agassiz, has not yet been received. His letters state it to be nearly ready and will be completed soon. The two volumes will be of large size.

The atlases to vols. 21 and 22, I am unable to inform the committee of the number of plates they will contain. Prof. Agassiz has concluded that they can be comprised in 200, forming two volumes of 100 plates each. There are 36 plates engraved.

I have no means of ascertaining how many plates the drawings completed will make. 1,672 figures have been drawn, 389 this year, and there are many more to be made, which are now in hand. The whole will be finished in about six months, when these drawings may be arranged to form plates.

The text of volumes 23 and 24, Hydrography and Physics, which were burned, are being reprinted out of the fire fund.

The 2d volume of charts, Hydrography, has been finished, out of the fire fund, and delivered.

In order that the committee may have a full knowledge of the expenditures during the last year, I annex the following table, showing what each volume has cost and under what fund.

Disposition of the funds of the Exploring Expedition during 1858.

Expended for—	On account of general fund.	Fire fund.	Total.
Vol. 8, Mammals and Ornithology.....	\$880 02	\$2,556 55	\$3,436 57
Vol. 12, Mollusca.....	325 46	159 75	485 21
Vols. 13 and 14, Crustacea.....	—	50 00	50 00
Vol. 15, Botany, by Gray.....	6 00	25 92	31 92
Vol. 17, Botany; Torrey, &c.....	1,648 92	1,459 01	3,107 93
Vol. 18, Botany, by Gray.....	215 00	—	215 00
Vol. 20, Reptilia.....	866 10	1,853 07	2,719 17
Vols. 21 and 22, Fishes.....	2,383 50	327 75	2,711 25
Vols. 23 and 24, Hydrography.....	24 83	1,392 50	1,417 33
Plate printing, 8, 12, and hydrography.....	72 04	335 14	407 18
Printing paper on hand.....	—	167 20	167 20
Presentation plate and labels.....	—	109 00	109 00
Salaries.....	1,500 00	—	1,500 00
Contingent expenses.....	973 54	—	973 54
	8,895 41	8,435 89	17,331 30

This shows an expenditure of, on the general fund..... \$8,895 41
On the fire fund..... 8,435 89

Total..... 17,331 30

which deducted from that to credit of cash fund, on the 1st January, 1858, leaves on hand :

General fund..... \$1,692 64
Fire fund..... 2,790 26

The fire fund is to replace what was destroyed by the fire, and is sufficient to finish what it was estimated to include. The general fund, it will be perceived, is almost exhausted, and inadequate to meet the contracts out for the preparation and publication, which must stop, unless an appropriation is made this session to continue it, at great loss to the government and sacrifice to the publication, besides the delay in finishing the work as contemplated by the act of Congress. The publication has been pushed forward with energy towards completion. The expenses have been unavoidably increased by the elaborate manner in which the drawings, and consequently engravings, are finished, in order to keep pace with the advances in science. Many details are now deemed necessary which have added more than 50 per cent. to the cost. None but the very best artists can be employed, and they have their fixed prices and will not work for less.

I submit herewith the most accurate estimate to print and complete the volumes, which have been prepared, and as nearly as I can, those in course of preparation.

ESTIMATE TO PRINT AND COMPLETE THE WORK.

Vol. 18, Botany, by Gray. 800. pages text and 100 plates.

Finishing 36 plates, partly engraved	-	-	-	\$360 00
Drawing	-	-	-	1,020 00
Engraving 64 plates, copper and lettering, (70)	-	-	-	4,480 00
Plate paper, 11 reams	-	-	-	275 00
Tissue paper, 11 reams	-	-	-	49 50
Printing 100 copies of 100 plates	-	-	-	200 00
Printing paper, 22 reams	-	-	-	193 00
Composition and letter press	-	-	-	1,000 00
Binding 82 copies text	-	-	-	328 00
Binding 82 copies atlas	-	-	-	246 00
Contingent	-	-	-	400 00
				<hr/>
				8,551 50
				<hr/>

Volume 19, Geography of Plants, by Dr. Pickering. 1,000 pages text and 4 maps.

Engraving 4 maps, paper, printing and coloring	-	-	-	\$350 00
Printing paper, 31 reams	-	-	-	272 00
Composition and letter press	-	-	-	1,200 00
Binding 82 copies	-	-	-	328 00
Contingent	-	-	-	100 00
				<hr/>
				2,250 00
				<hr/>

Volumes 21 and 22, Fishes, by Professor Agassiz. 2,000 pages text, and 200 plates.

Finishing 28 plates now engraved	-	-	-	\$360 00
Engraving 172 plates, \$65 per plate	-	-	-	11,180 00
Printing paper, 62 reams	-	-	-	543 60
Composition and letter press	-	-	-	2,500 00
Plate paper, 22 reams	-	-	-	550 00
Plate printing	-	-	-	400 00
Tissue paper, 22 reams	-	-	-	99 00
Coloring 100 copies each of 100 plates, at 10 cents each	-	-	-	1,000 00
Binding two volumes text, 82 copies each	-	-	-	636 00
Binding two volumes atlas	-	-	-	492 00
Contingent	-	-	-	500 00
				<hr/>
				18,282 60
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Volume 17, Botany, by Torrey, Sullivant, Bayley, Tuckerman and Curtis. 400 pages text, and 55 plates.

Printing paper, 11 reams	-	-	-	\$96 80
Composition and letter press	-	-	-	500 00
Binding 82 copies text	-	-	-	328 00
Plate paper, 6½ reams	-	-	-	162 00
Plate printing	-	-	-	110 00
Tissue paper, 6½ reams	-	-	-	29 25
Binding 82 copies atlas	-	-	-	246 00
Engraving 3 algæ plates	-	-	-	195 00
Work on lichens	-	-	-	50 00
Contingent	-	-	-	200 00
				<hr/>
				1,917 05
				<hr/>

Recapitulation of the above 5 volumes.

Volume 17, botany and atlas	-	-	-	\$1,917 05
Volume 18, botany and atlas	-	-	-	8,551 50
Volume 19, geography of plants	-	-	-	2,250 00
Volumes 21 and 22, fishes and two atlases	-	-	-	18,282 60
				<hr/>
				31,001 15
				<hr/>

This amount does not include salaries or contingencies. Of the former, there is still due Dr. Gray \$2,100, under his contract with the committee. Professor Agassiz has sent in two bills for \$500 each, which I have sent to you for approval. In my letter to you of 29th October, I laid the whole case before you relative to his contract;

I also sent a letter from Professor Agassiz. If these are not paid the balance on hand will be \$1,000 greater.

Dr. Torrey, I understand, has a claim on the committee, as also Dr. Pickering and Mr. Sullivant, but I am not aware of any contract existing to authorize these claims, and they depend upon the committee for receiving such allowance for their labors as may be deemed just.

As it may be more satisfactory, I state the disposition I have designed for the expenditure of the balance on hand:

The balance of the fire fund is \$2,790 26. To replace the twenty-third and twenty-fourth volumes of Hydrography and Physics, which is partly printed, say 500 pages yet to print—

Composition and letter-press	\$650 00
Binding two volumes text.....	656 00
Engraving tidal diagrams.....	300 00
Paper and printing for diagrams.....	75 00
Contingent	150 00

1,831 00

Volume 12, atlas—

Coloring 29 plates.....	\$500 00
Tissue paper.....	29 25
Binding 77 copies.....	230 00
Contingent	50 00

809 25

Volumes 13 and 14, crustacea—

Binding two copies text.....	20 00
Atlas, three copies, paper, printing, and binding	26 00

46 00

Binding three copies of text, plate printing and paper.....	26 00
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26 00

	2,712 25
Fire fund on hand.....	2,790 26

78 01

The \$1,690 64 of the general fund remains to pay salaries and expenses; if the committee decline to approve Professor Agassiz' two bills of \$500 each, this amount will be added to the above, making \$2,690 64. This will then be enough to pay the salary of Mr. Stuart and the contingencies for the ensuing year.

In comparing the above estimates with those heretofore submitted to the committee, they exceed them but very little in amount, although the prices, as before stated, have advanced. This is owing to a reduction in the number of plates. It is confidently relied upon that the amount can be confined to the estimate stated for the publication of the remaining volumes, to which \$5,000 is to be added to meet the contract of Dr. Gray and the demands of others, if any are due, as

well as the salary of Mr. Stuart and contingencies of rent, fuel, &c., which cannot be dispensed with until the work is finished.

Three copies of volume sixteenth are wanting; they were destroyed by fire in Philadelphia, but I have not incurred the expense of reprinting, as they can be replaced out of those in the library and avoid the expense of a reprint. I have made application to the committee for this to be done, but am not aware they have, as yet, taken it into consideration.

I have thus given you the fullest possible statement of the present condition of the publication and the preparation.

We have no outstanding bills, and all the property is safely kept at the Merchants' Exchange, Philadelphia, which is believed to be as free from accident by fire as could be desired.

It may be well for me to add a few remarks relative to this national work and the control it has been under. Congress authorized the publication by act of August, 1842, prescribed the style of the work, and authorized the Joint Committee on the Library to conduct it. The model named in the act was that of the "Voyage of the Astrolabe," published by the French government, which was then considered the very best, both in style of art and execution, and was known to be very expensive. Such a work had never been attempted in this country before. They directed that nothing should be printed but what was new, so that everything which was published should be to advance science. They limited the copies to one hundred. They directed the disposition to be made of the copies named; the governments to whom they were to be presented. No members of either House of Congress could receive copies for their constituents or themselves. Why this was done, I know not. The following list will show what has been published and delivered, viz:

Volumes 1 to 5, the Narrative, by Captain Wilkes.

Volume 6, Ethnography, by Mr. H. Hale.

Volume 7, Zoophytes, by Professor Dana.

Volume 8, Zoology, by Professor Coffin.

Volume 9, Races of Man, by Dr. Pickering.

Volume 10, Geology, by Professor Dana.

Volume 11, Meteorology, by Captain Wilkes.

Volume 12, Conchology, by Dr. A. A. Gould.

Volume 13, Crustacea, part 1, by Professor Dana.

Volume 14, Crustacea, part 2, by Professor Dana.

Volume 15, Botany, by Professor Gray.

Volume 16, Botany, by Mr. Brackenridge.

IN PRESS.

Volume 23, Hydrography, by Captain Wilkes.

Volume 24, Physics, by Captain Wilkes.

PREPARED.

Volume 17, Botany, by Sullivant, Torrey, Bailey, Curtis, and Tuckerman.

Volume 19, Geography of Botany, by Dr. Pickering.

PREPARING.

Volume 18, Botany, by Professor Gray.
 Volume 21, Ichthyology, by Professor Agassiz.
 Volume 22, Ichthyology, by Professor Agassiz.

The following atlases have been published and delivered :

Atlas to volume 7, containing 61 plates.
 Atlas to volume 8, containing 53 plates.
 Atlas to volume 10, containing 21 plates.
 Atlas to volume 12, containing 52 plates.
 Atlas to volume 13, } containing 96 plates.
 Atlas to volume 14, }
 Atlas to volume 15, containing 100 plates.
 Atlas to volume 16, containing 46 plates.
 Atlas to volume 20, containing 32 plates.
 Atlas to volume 23, containing 105 plates.
 Atlas to narrative, containing 5 maps.

PREPARED.

Atlas to volume 17, containing 55 plates.
 Atlas to volume 19, containing 4 maps.

PREPARING.

Atlas to volume 18, to contain 100 plates.
 Atlas to volume 21, to contain 100 plates.
 Atlas to volume 22, to contain 100 plates.

The Joint Library Committee fixed upon the form of the work, size of the volumes, of both text and atlases, appointed the different parties to prepare the several departments of science for publication, and authorized contracts to be made for the paper, drawing, engraving, printing, and binding for the whole work. It was expressly understood that nothing was to be prepared or published but what was new, and this has been thoroughly adhered to. They could not obtain the whole services of the parties best qualified to prepare this work of great scientific value, as they were engaged in professions which could not be laid aside; but they gave, and it was so understood, what time they could. It was resolved, in order to protect the government, that these gentlemen should receive such salary according to the amount of work they could certify they had accomplished. This has been strictly followed, and I verily believe that many of them have received no adequate compensation, but have incurred, with cheerfulness and single heartedness, expenses which fully absorbed all they received, and have looked solely to the reputation they might acquire. This course very naturally prolonged the time, as every one knew it would consequently increase the contingent expenses and superintendences; but, notwithstanding all

these drawbacks, in comparing the publication with those of like kind in Europe, it has advanced at a more rapid rate, and is the cheapest publication ever made in this or any other country, and far more perfect, and I know of no work which will compare with it in all its parts.

I have understood from you that you decline asking for any further appropriation to carry this publication to its final end, and that it may remain unfinished. To your course of action I shall offer no remark or objection; but I do not believe there will be found any Congress which will consent to see this publication stop unfinished. The government of the United States stands pledged to finish it. All the parts or volumes above enumerated have been forwarded by this government to all foreign governments, and I cannot believe, for the small sum yet required to finish, they will repudiate what they have engaged to do. All the expenditures for this publication are known, and no sum, even the smallest, but what has passed under the signature of the chairman of the Joint Library Committee, as well as my own, can at any time be referred to and examined. That the publication was expected to cost a large sum the model named in the act is evidence. It was not a consideration of expense in the first place, but whether the contemplated work could be executed in this country. It has been done, and, as I said, challenges any work of the kind for its beauty and the economy with which it has been conducted. I may add, with great truth, it is creditable to the country and a worthy monument to the expedition.

I am, very respectfully, your obedient servant,

CHARLES WILKES.

Hon. JAMES A. PEARCE,

Senator United States,

Chairman Joint Committee on the Library of Congress.

P. S. I have sent to the committee room a large number of drawings of the 18th and 21st and 22d volumes, which have been prepared, for the examination of the committee.

Respectfully,

C. W.

IN THE SENATE OF THE UNITED STATES.

MARCH 2, 1859.—Ordered to be printed.

Mr. FITCH submitted the following

REPORT.

The Joint Committee on Printing, to whom was referred the following resolution, viz: "Resolved, That the Joint Committee on Printing inquire and report whether any new provisions of law are necessary to secure a faithful performance of the existing contracts which provide for accurate reports of the debates of the two Houses," report:

That they have had the subject under consideration, and given it such attention as their time and the pressure of other public business would allow.

The subject of reporting and printing the debates of Congress was referred to the Committee on the Library in the year 1846, and on the 7th of August, of that year, the committee on the part of the Senate made a report, from which the following is an extract:

"The subject referred to them is one of great importance, and has long occupied the most serious attention of Congress. The publication of the debates and proceedings of Congress is due to the country, and to the members themselves, and is necessary to a proper knowledge of the action of the government. Public opinion is the judge of men and measures under our form of government, and the two Houses of Congress being the great forums for the discussion of public measures, it is to these Houses, and what is said and done in them, that enlightened public opinion must look for much of the material which is to guide its decision.

"The publication of the debates and proceedings involves three points of expense and trouble, *to wit*: reporting, printing, and circulating; and each of these besides, requires care and fidelity; and reporting requires peculiar talent and education. Congress, as a body, could not take upon itself the management of a business requiring so much skill, care, expense, and trouble, and accordingly has never attempted it. But the publication of the debates and proceedings, in some form, and to some extent, being imperatively required by public opinion, the newspaper press, at its own cost and trouble, especially at the seat of government, have endeavored to supply the want, but necessarily to a limited degree, and at great sacrifice of pecuniary interest to itself. The oldest established paper in this city, that of

Messrs. Gales & Seaton, is alleged to have paid out an hundred thousand dollars for reporting debates of Congress within the last thirty years ; and, no doubt, the other principal papers which undertook to give full reports of debates, paid in the same proportion during the time of their reporting. This mode of publishing is evidently too expensive for the newspaper press of this city, and is, besides, imperfect and insufficient, and withdraws from Congress the proper control and supervision of its own proceedings. Authentic publications, under the authority of Congress, and at its expense, have, therefore, been the mode which has suggested itself as the adequate means of making the country acquainted with the debates and proceedings of a body intrusted with the power of national legislation, and exercising so great an influence over public opinion throughout the Union ; and this mode of publication has frequently been made the subject-matter of anxious consideration before the committees of the two Houses. Plans have been reported by these committees in favor of this mode, but no general system has ever been adopted by the two Houses. A partial system adopted by the Senate, for itself, at the last session, has entirely failed. It has failed at all the points for which reporting is desirable, *to wit* : promptitude, accuracy, and diffusion among the people. It will probably be abandoned. The House of Representatives has no system of its own, and is dependent upon the voluntary services of the public press for the publication of its debates and proceedings, a service which, howsoever well performed for that House, during the present session, cannot expect to be continued. Both Houses are, therefore, without any system of reporting its debates and proceedings.

“ By the Constitution each House is to keep a journal of its proceedings and to publish them. It would be a very narrow construction of this clause of the Constitution, and a very insufficient communication of the proceedings of Congress to the people, to confine the publication under this clause to the yeas and nays and the notices of bills and motions which appear on the journals ; nor is such the practice. Reports of committees and public documents are published in immense numbers, and at a vast expense, and after all without the great object and advantage of publication, that is to say, *diffusion among the people*, unless the newspaper press lends its aid to the republication of what Congress has printed. Publicity is the soul of our government action. The nature of our government, the interest of the country, and the will of the people, require publicity ; and it is exacted in some form from all the departments of the government. All the acts and communications (with few exceptions) of all the branches of the government are published. While in the document form they are seen by few ; it is through congressional debates that the contents of these documents go to the country. But for the publication and diffusion of the Congress debates no provision is made ; and all other publication is inadequate without that.

“ Impressed with a full sense of the importance and necessity of reporting and publishing the debates of Congress, and convinced that nothing less than the power of Congress (its power in point of authority and means) is adequate to this object, the committee of the

two Houses fully decided upon reporting a plan to their respective Houses to place this business under the control and management of the two Houses, each for itself. The principle being agreed in, the details became points of anxious inquiry. To accomplish the great object in view, two different degrees or steps in the publication became indispensable. First, a prompt publication of the debates of each day on the morning of the following day, and their immediate communication to the people in all parts of the United States. To do this required the columns of the daily press, and necessarily involved a running report of the debate, to be put to press most usually without revision or correction by the Speaker. Secondly, a revised and corrected publication of the same debates in a durable book form, to constitute the authentic parliamentary history of Congress. Interviews with the practical men and proprietors of the large printing establishments in this city show that it can be done. The National Intelligencer and the Union each will undertake to report, print, publish, and circulate, through their exchanges and subscribers, the daily debates of Congress. Messrs. Blair & Rives will engage to continue their revised and corrected publication of the same debates in the book form in which it is now done. This is for the daily running debate, and which is to come out on the morning of each day after its delivery, and to appear also in the country edition of the paper. Speeches detained by members for correction and revisal will appear in the daily papers at the first moment there is room for them without throwing out the current debate; in the Congressional Register they will appear in an appendix; but the whole running debate may be revised and corrected for prompt publication in the Register, and for that purpose the publisher of the daily reports will be required to deliver to each member a copy of the morning paper, that he may see how he is reported in each, and correct it immediately, if he chooses, and send it to the Congressional Register to take its permanent place in the book form.

“The committee have resolved that there should be two daily papers, one of each political party, to publish the current debates; and this for obvious reasons. It is idle to quarrel with human nature. Two parties exist, have existed, and will exist, in this as in all free governments; and it is in vain for the party in power to endeavor to monopolize the advantages, and wrong in itself and often politically injurious to give one-sided information to the public. The plan proposed for the publication of the current daily debates puts each party upon an equality; and, what is more, it enables the readers and copyists from each paper to see the whole debate on both sides, and thus escape the evils of one-sided and partial information. The revised and corrected debates in the book form having nothing of the party character of a political paper, and containing nothing but the debates and proceedings, do not require two establishments to print them, and are therefore proposed to be left in the faithful and competent hands in which they now are.

“This is the plan which has recommended itself to the committees of the two Houses, as combining all the advantages proper to be obtained by the publication of the debates and proceedings of Con-

gress ; an object which requires a double publication, one in the daily press for the daily information of the people, and one in the book form for the permanent preservation of the debates and proceedings."

August 7, 1846.—The Senate adopted a resolution authorizing each member of the Senate to subscribe for twelve copies of the *Globe* and *Appendix*, at six dollars a copy, (of both,) for the long, and three dollars for the short session. A copy of the resolution, and of all other material action of the Senate upon the subject of publishing the congressional debates is annexed, and is made a part of this report.

IN THE SENATE OF THE UNITED STATES, AUGUST 7, 1846.

Resolved, That each member of the Senate be authorized to subscribe for twelve copies of the debates of Congress, as published in the Congressional *Globe*, by Blair & Rives, or in the *Register of Debates*, by Gales & Seaton ; *Provided*, The reports of said debates shall be subject to the revision of the speakers, and shall be mixed with no extrinsic matter, whether political or otherwise, and shall be paid for out of the contingent fund of the Senate, at prices not exceeding three dollars per copy for the debates of the short sessions, and six dollars per copy for the debates of the long sessions.

But if the printing done in publishing said reports of debates shall not amount to those prices at the present rates of Congress printing, then the price of said copies to be as much less as the deficiency at these rates may amount to ; but in no case is the price of said copies to exceed three and six dollars each, as above provided.

Resolved, That the Secretary of the Senate be authorized to contract with Messrs. Blair & Rives, and with Messrs. Gales & Seaton, accordingly, and notify the Senate thereof.

Know all men by these presents, that we, Francis P. Blair, and John C. Rives, and James F. Halliday, are held and firmly bound unto the United States of America, in the sum of ten thousand dollars, to which payment well and truly to be made we jointly and severally bind ourselves, our heirs, executors, administrators, and assigns, and each and every of them, firmly by these presents : Sealed with our seals, and dated this 5th day of December, in the year one thousand eight hundred and forty-six.

The condition of this obligation is such that, should the above bound Blair & Rives well and faithfully furnish such number of copies of the debates of Congress as may be subscribed for, agreeably to the resolution of the Senate of August the seventh, one thousand eight hundred and forty-six, and in the manner and form, and upon the terms and conditions prescribed by the said resolution, then this obligation to be null and void ; otherwise to be and remain in full force and effect.

F. P. BLAIR,	[SEAL.]
JOHN C. RIVES,	[SEAL.]
JAS. F. HALLIDAY,	[SEAL.]

Signed, sealed, and delivered in the presence of

JAS. HOLLAND.

WM. W. CURRAN.

Z. W. McKNEW.

IN THE SENATE OF THE UNITED STATES, *March 3, 1847.*

Resolved, That the Secretary of the Senate be and is hereby authorized and directed to contract with Dr. James A. Houston to furnish full and accurate reports of the proceedings and debates of the Senate for the thirtieth Congress: *Provided*, That the cost thereof shall not exceed the sum of twelve thousand dollars for the long session, and six thousand dollars for the short session; and in the event of an extra session of said Congress, in like proportion for such extra session, to be paid out of the appropriation for the contingent expenses of the Senate; *Provided, also*, That said contractor shall employ a sufficient number of stenographers, and other reporters to enable him to furnish full and accurate reports of each day's proceedings and debates in printed form on the succeeding morning, and shall have the same neatly made up at the close of every week in quarto form for preservation; and shall furnish to each member of the Senate twenty copies of the daily, and twelve copies of the weekly publication; and that he shall also send daily, by mail, a copy of the daily reports to the principal newspapers in the United States; said reports to be furnished to such of the newspapers in the city of Washington as shall print and publish the same daily, and supply the members of the Senate with twelve copies of a weekly publication, containing the matter furnished during the week; the said paper to contain no political discussions except the debates, and to be in no way connected with any political press.—(See Senate Journal page 272-3; 2d session 29th Congress.)

IN THE SENATE OF THE UNITED STATES, *August 11, 1848.*

The Senate proceeded to consider the resolution reported by the select committee the 8th instant in relation to the publication of the debates and proceedings of the Senate; and, having been amended, to read as follows:

Resolved, That, in order to secure a more full, impartial, and prompt publication of the proceedings and debates of the Senate, the Secretary of the Senate be, and he hereby is, authorized and directed to enter into a contract, to take effect from this day with the proprietors of each of the daily papers in this city—the National Intelligencer and the Union—and to continue until otherwise ordered by the Senate, for the daily publication in each paper of all the debates and proceedings of the Senate, and for the early subsequent publication of such speeches as members may choose more carefully to revise and write out at full length, for which the Secretary is authorized to make weekly payment, at the rate of seven dollars and fifty cents for a column of briefer type: *Provided*, That the proceedings and current debates be transferred to the country edition of said papers; and one copy of the daily edition of each paper shall be furnished to each member during the session without additional charge.

Resolved further, That there be allowed and paid, out of the contingent fund of the Senate, to the present official reporter of the Senate,

upon his relinquishing all rights under his contract from and after the end of the present session, two thousand five hundred dollars.

On the question to agree thereto,

It was determined in the affirmative, { Yeas..... 38
Nays 9

(See Senate Journal, page 567, 1st session, 30th Congress.)

On the 11th August, 1848, contracts were entered into by the Secretary of the Senate with Thomas Ritchie, proprietor of "The Union," and with Gales and Seaton, proprietors of "The National Intelligencer," in pursuance of the above resolution.

IN THE SENATE OF THE UNITED STATES, *February 24, 1849.*

Resolved, That the resolution of the Senate of the eleventh day of August, 1848, directing the Secretary of the Senate to contract with the publishers of the two principal newspapers in this city for reporting and publishing the debates and proceedings of the Senate, be so modified as to exclude, after the adoption of this resolution, from any contract which has or may hereafter be made in pursuance of said resolution, the publication of revised speeches, a report of which has once been published; and also to exclude from the report of the proceedings of the Senate messages and reports from executive officers of the government, and from committees of the Senate; and that the Secretary notify the persons with whom he has entered into contracts of these limitations and modifications of said resolution.

(See Senate Journal, page 256, 2d session, 30th Congress.)

IN THE SENATE OF THE UNITED STATES, *March 10, 1851.*

The President pro tempore laid before the Senate a letter of Gales & Seaton, addressed to the Secretary of the Senate, stating that they are under the necessity of terminating the existing engagement for the daily report and publication of the debates of the Senate; which was read.

On motion by Mr. Badger,

Ordered, That it be referred to the Committee on Printing.

(See Senate Journal, page 292, 2d session 31st Congress.)

IN THE SENATE OF THE UNITED STATES, *March 11, 1851.*

Mr. Borland, from the Committee on Printing, to whom was referred, the 10th instant, a letter from Messrs. Gales & Seaton, reported "that the committee be discharged from the further consideration thereof;" and the report was concurred in.

(See Senate Journal, page 293, 2d session 31st Congress.)

IN THE SENATE OF THE UNITED STATES, *January 20, 1852.*

Mr. Norris submitted the following resolution for consideration:

Resolved, That the Secretary of the Senate be, and he is hereby, authorized and instructed to audit, and from time to time, to settle the

account of John C. Rives for the reports of the Senate proceedings and debates published in the Congressional Globe, at seven dollars and fifty cents per column.

(See Senate Journal, page 131, 1st session 32d Congress.)

IN THE SENATE OF THE UNITED STATES, *January 28, 1852.*

On motion by Mr. Norris, and by unanimous consent, the vote ordering the resolution for settling the accounts for reporting the debates and proceedings of the Senate to be engrossed and read a third time, was reconsidered.

The Senate resumed the consideration of the said resolution; and having been amended on the motion of Mr. Norris to read as follows:

Resolved, That the Secretary of the Senate be, and he is hereby, authorized and instructed to audit, and from time to time to settle the account of John C. Rives for the reports of the Senate proceedings and debates published in the daily Globe, at seven dollars and fifty cents per column: *Provided*, however, that in auditing and settling such accounts nothing shall be allowed for the publication of revised speeches, a report of which has once been published, nor for messages and reports from the executive offices of the government, nor for reports from committees of the Senate.

Ordered, That the resolution be engrossed and read a third time.

Resolution passed January 29, 1852.

(See Senate Journal, pages 159 and 163, 1st session 32d Congress.)

On the 8th December, 1853, Robert Armstrong having become the proprietor of the Union, informed the Secretary of the Senate of his willingness to continue the performance of the contract made with Thomas Ritchie August 11, 1848.

IN THE SENATE OF THE UNITED STATES, *February 14, 1854.*

The President *pro tempore*, laid before the Senate a letter from Robert Armstrong, editor of "The Union," asking to be relieved from his engagement to publish the proceedings and debates of the Senate; which was read.

On motion by Mr. Hamlin,

Ordered, That it be referred to the Committee on Printing.

(Senate Journal 1st session 33d Congress, page 181.)

IN THE SENATE OF THE UNITED STATES, *February 16, 1854.*

The President *pro tempore*, laid before the Senate a letter from Beverly Tucker and William M. Overton, publishers of the "Washington Sentinel," proposing to assume the contract for publishing the debates and proceedings of the Senate relinquished by Robert Armstrong; which was read.

Ordered, That it be referred to the Committee on Printing.

(See Senate Journal 1st session 33d Congress, page 189.)

IN THE SENATE OF THE UNITED STATES, *March 14, 1854.*

Mr. Hamlin, from the Committee on Printing, to whom were referred the letter of Robert Armstrong, and the letter of Beverly Tucker and William M. Overton, respecting the publication of the debates and proceedings of the Senate reported thereon.

On motion by Mr. Hamlin,

Ordered, That the report lie on the table.

(See Senate Journal, 1st session 33d Congress, page 259)

IN THE SENATE OF THE UNITED STATES, *May 18, 1854.*

Resolved, That the Secretary of the Senate be, and he is hereby directed to contract with the proprietor of the "Globe" for five thousand and twenty-two additional copies of the "Congressional Globe and Appendix" for the present Congress.

OFFICE OF THE SECRETARY OF THE SENATE OF THE UNITED STATES,

June 13, 1854.

SIR: Your proposal of this day's date "to furnish the Senate five thousand and twenty-two additional copies of the Congressional Globe and Appendix for this Congress, commencing with this session, according to the resolution of the Senate, passed the 18th day of May, 1854, for the original subscription price, six dollars a copy for a long session, and three dollars for a short one," is accepted.

I am, sir, your obedient servant,

ASBURY DICKINS,

Secretary of the Senate.

JOHN C. RIVES, Esq., *Washington.*

IN THE SENATE OF THE UNITED STATES, *August 6, 1856.*

Mr. Johnson submitted the following motion ; which was considered by unanimous consent and agreed to :

Ordered, That each member of the Senate be henceforth supplied with the same number of the "Congressional Globe and Appendix," and at the same price per copy as was supplied to the members of the Senate for the last Congress.

IN THE SENATE OF THE UNITED STATES, *August 9, 1856.*

Mr. Brown submitted the following resolution for consideration :

Resolved, That the Secretary of the Senate pay from the contingent fund of the Senate to the proprietors of the Union, National Intelligencer, and Sentinel, for publishing the debates and proceedings of the Senate for the last two Congresses, and up to the conclusion of the present session, at the rate of four dollars and fifty cents per column ; provided, that neither of said journals, which may have already been paid for any portion of the above service, shall be again paid for the same.

(See Senate Journal, page 550, 1st and 2d sessions 34th Congress.)

AUGUST 30, 1856.

On motion by Mr. Cass,

The Senate proceeded to consider the resolution submitted by Mr. Brown on the 9th of August, making compensation to the proprietors of the National Intelligencer, Union, and Sentinel, for publishing the debates and proceedings of the Senate of the 32d and 33d Congresses, and of the present session.

And the resolution was agreed to: Yeas 18, nays 16.

(See Senate Journal, page 677, 1st and 2d sessions 34th Congress.)

An act making appropriations for certain civil expenses of the government for the year ending the thirtieth of June, eighteen hundred and fifty-seven.

SEC. 16. *And be it further enacted*, That there shall be paid to John C. Rives, by the Secretary of the Senate and Clerk of the House of Representatives, out of the contingent funds of the two houses, according to the number of copies of the Congressional Globe and Appendix taken by each, one cent for every five pages of that work exceeding three thousand pages for a long session, or fifteen hundred pages for a short one, including the indexes and the laws of the United States, commencing with this session.

Approved August 18, 1856.

Amount paid under above section :

For the 1st session, 34th Congress, 1855-'56.....	\$10,263 48
For the 3d session, 34th Congress, 1856-'57.....	1,476 10
For the 1st session, 35th Congress, 1857-'58.....	10,211 52

The prices fixed by the Senate resolution of August 7, 1846, appear to have been reported by the Library Committee after a careful investigation, and were subsequently adopted by the House. The contract of December 5, 1846, with Blair & Rives, was made under and in accordance with this resolution. The publisher of the Globe had no connection with the daily publication of the debates for the Senate until 1852, after several other parties had failed to continue agreements to publish them at the price paid the Globe. All contracts and obligations in the matter, both of reporting and publishing have been fully and promptly executed by Mr. Rives. The reports, both in the daily form and in the Congressional Globe and Appendix, are furnished by him more full and cheaper than similar work is had by any government in the world. The late chairman of the Committee on Printing, (Mr. Johnson of Arkansas,) addressed letters to a number of editors and publishers in this and neighboring cities, for the purpose of ascertaining the cost per column of publishing in their respective papers. Their answers show the average of their rates to be more than double the amount paid Mr. Rives; one only proposes to do it *nominally* cheaper. The result of past experiments upon the part of others to do the work, even at Mr. Rives' price, has not been such as to encourage the Senate to become a party to their renewal. If the reports and their publication are to be continued, the committee are unable to perceive wherein the Senate or the treasury is to be benefited

by any change of the present plan. The experience of the past assures us that no one can long report and publish them for a less compensation than that now paid, and any failure to continue them because such compensation is withheld will create danger of additional expense with no certainty that the work if resumed will again be as fully and faithfully performed.

As there is now "a faithful performance of existing contracts," the committee deem no "new provisions of law" necessary.

IN THE SENATE OF THE UNITED STATES.

MARCH 3, 1859.—Ordered to be printed.

Mr. STUART submitted the following

REPORT.

The Committee on Public Lands, to whom was referred the memorial of the Milwaukie and Rock River Canal Company, praying that the State of Wisconsin may not be released from its indebtedness to the United States for moneys received from the sale of the canal lands, without provision being made to protect the rights of the company; also, three memorials of the legislature of the State of Wisconsin, praying the adoption of such measures as will secure to that State the amount due from the sale of public lands therein; and also a joint resolution in relation to certain liabilities assumed by the State of Wisconsin, respectfully report the following brief history of the facts as they appear before the committee :

By an act of the legislative assembly of the Territory of Wisconsin, approved January 5, 1838, the Milwaukie and Rock River Canal Company was incorporated, and by section 6 of said act "said corporation" are empowered "to construct, maintain, and continue a navigable canal or slack water navigation from the town of Milwaukie to Rock river." The provisions of this section, together with those of sections 7, 8, and 9, give the company full power over the subject of the canal. The rights conferred on the company are perpetual, and their powers extend to and over all the works which shall be made on the canal, subject only to a limitation of time within which the same shall be done, and to the conditional right of purchase reserved to the future State. This act was approved by "the assent of Congress," expressly given, and the rights and powers of the company were fully recognized and confirmed.

By section 23 of the same act it is further provided : "and the said corporation are hereby authorized to apply to Congress for such an appropriation, in money or lands, to aid in the construction of the works authorized by this act, as Congress in its wisdom shall see proper to grant.

In pursuance of this authority the company applied to Congress for a grant of land to aid in constructing the canal.

This application was favorably considered by Congress, and on the

18th of June, 1838, an act was approved which "granted to the Territory of Wisconsin, for the purpose of aiding in opening a canal to unite the waters of Lake Michigan, at Milwaukee, with those of Rock river, between the point of intersection with said river of the line dividing townships seven and eight and the Lake Koshkonong, all the land heretofore not otherwise appropriated or disposed of in those sections and fractional sections, which are numbered with *odd* numbers on the plats of the public surveys, within the breadth of five full sections, taken in north and south or east and west tiers on each side of the main route of said canal from one end thereof to the other, and reserving the even numbered sections to the United States;" and declaring that "the land so granted to aid in the construction of said canal shall be subject to the disposal of the legislature of the Territory, for the purpose aforesaid and for no other." The act then proceeds to direct that, "as soon as the main route of the canal should be definitely located and established, agreeably to the act of the legislature of said Territory incorporating the *Milwaukee and Rock River Canal Company*," the governor of the Territory should transmit a plat of the route to the Commissioner of the General Land Office, who was required to ascertain the particular lands granted and transmit a list of the same to the governor, who, or some other person duly authorized by the territorial legislature, or State legislature, after the admission of the State into the Union, was empowered to "sell the whole or any part of the land so granted, at a price not less than \$2 50 an acre, and to give title in fee simple therefor."

The remaining or *even* sections reserved to the United States were exempted from the pre-emption right, and were not to be sold at less than \$2 50 per acre; and in case the sum of \$2 50 per acre could not be obtained for the *odd* sections within five years from the first sale attempted to be made, the territorial or State legislature was authorized to reduce their minimum price.

The act also expressly gives the assent of Congress to the charter granted by the territorial legislature to the Milwaukee and Rock River Canal Company, subject to the following modifications:

1st. "That whenever the Territory of Wisconsin shall be admitted into the Union as a State, the lands hereby granted for the construction of the said canal, or such parts thereof as may not have been already sold and applied to that object, under the direction of the territorial government, shall vest in the State of Wisconsin, to be disposed of under such regulations as the legislature thereof shall provide; the proceeds of sales to be applied to the construction of said canal, or such parts thereof as may not have been completed; and the State of Wisconsin shall be entitled to hold, in virtue of the grant hereby made, as many shares of the stock of the said canal as shall be equivalent to the aggregate of all the sums of money arising from the net proceeds of the sales of the said lands and applied to the construction of this canal, anything in the charter of the Milwaukee and Rock River Canal Company notwithstanding, and shall be entitled to the same dividends on said stock as any other stockholder, and, in the event that the said State shall make no other adequate provision for purchasing out the residue of the stock of the said canal, the dividends of

the State stock hereby acquired, and all other proceeds of the sales of the lands hereby granted, shall constitute a fund, and be applied to the extinguishment of the claims of all other stockholders, until the entire stock vested in the canal shall have been acquired by the State;" and,

2d. "That in estimating the principal sum and interest to be paid by the said *Territory*, or the future State of Wisconsin, to the stockholders of said canal, a credit shall be given to the Territory or State for all dividends received by said stockholders prior to the extinguishment of their interest in the said canal.

The Territory, by its legislature, accepted this grant as trustee, and entered upon the execution of the trust confided to it.

By an act approved February 12, 1839, entitled "An act to provide for aiding in the construction of the Milwaukee and Rock River canal," provision is made for the sale of the lands; a loan of \$50,000 is authorized, and the proceeds of the sale of lands pledged for its payment; and a board of commissioners is established, consisting of an acting commissioner, a register, and receiver, who are constituted agents of the Territory to superintend the work on the canal, to sell the land, receive, keep, and disburse the funds, and protect the interests of the Territory, as connected with the operations of the company. Further provision was made by the legislature for carrying out the trust, by the passage of "an act to amend" the former law, approved January 11, 1840. Also, by the passage of "An act supplementary to the several acts relating to the Milwaukee and Rock River canal," approved February 12, 1841, whereby a loan of \$100,000 was authorized to aid in the construction of said canal. And also, still further, by the passage of "An act in addition to an act supplementary," &c., approved February 19, 1841.

By all these acts, from the 5th January, 1838, to the 19th February, 1841, it is apparent that the legislature did authorize the company, in explicit terms, to apply for and obtain the grant, and that when so obtained the legislature did accept of it as trustee, and did enter upon the discharge of the trusts confided to it by Congress in said grant.

In pursuance of the aforementioned act of Congress and the charter of the company, the route of the canal was laid out, being about fifty-two miles in length, the requisite plans prepared and the *odd* sections designated. The number of acres embraced in the grant is about 150,000.

In February, 1842, the territorial legislature passed a preamble and resolutions, setting forth that all connexion between the legislature and the canal company ought to be dissolved, &c., and providing for a suspension of the sale of the lands granted in aid of the canal.

On the 24th February, 1845, an act was passed, entitled "An act to authorize the further sale of the canal land and for other purposes."

On the 3d February, 1846, the legislature passed a joint resolution relative to the canal funds, making provision as to the disposition of the sales of the canal lands, (applying them to the uses of the Territory,) and at the same time pledging the faith of the Territory and future State of Wisconsin for the repayment of the sum which shall be

diverted thereby to the canal fund whenever required for the purposes of the trust.

On the 8th February, 1847, the legislature passed "An act to amend an act to authorize a future sale of canal lands and for other purposes," making provision for the sale of said lands.

On the 11th March, 1848, the legislature passed "An act to amend an act to authorize a further sale of canal lands, and for other purposes, and the act amendatory thereto."

Under these acts, &c., the proceeds of the sales of these lands went into the treasury of the Territory to a large amount, exceeding, as believed, \$40,000, and were applied in payment of territorial debts and liabilities.

The act of Congress of May 29, 1848, admitting the State of Wisconsin into the Union, provides "that the liabilities incurred by the territorial government of Wisconsin, under the act entitled "An act to grant a quantity of land to the Territory of Wisconsin, for the purpose of aiding in opening a canal to connect the waters of Lake Michigan with those of Rock river," heretofore referred to, shall be paid and discharged by the State of Wisconsin;" and makes further provision, that the purchaser of any of the even numbered sections heretofore reserved under the act granting the same to aid in the construction of the canal, sold since said reservation was made at \$2 50, shall be entitled to a certificate from the Commissioner of the General Land Office for the excess over \$1 25 paid by him; which certificate shall be received in payment for the public lands of the United States to the amount of such excess.

The amount of moneys received by the Territory and State of Wisconsin from the sales of these canal lands is stated by the Commissioner of the General Land Office to amount to \$313,579 55, estimating the quantity of land contained in the grant, as stated by the Commissioner, at 138,995 99 acres, and the quantity sold at 125,431 32 acres, and the price at \$2 50 per acre, and for which sum the State of Wisconsin is held to be indebted to the United States, on account, as audited to the General Land Office.

It appears by the letter of the Commissioner of the General Land Office on this subject, under date the 12th April, 1858, that the State of Wisconsin has a credit in the account above referred to for the amount of the three per cent. fund accruing to the State during the years 1855 and 1856, under the provisions of the act of Congress of August 6, 1846, and May 29, 1848; and that the amount thereof due the State on the 31st December, 1854, was \$238,964 17.

Your committee are of opinion that the State of Wisconsin has become liable, and is bound by express and repeated provisions of law to pay to the United States the whole amount of money received by her for the land sold.

Also, that the said canal company are entitled to be reimbursed for all moneys paid out, and expenses properly incurred by it in obtaining the grant of land referred to, and in prosecuting the work upon said canal.

IN THE SENATE OF THE UNITED STATES.

MARCH 3, 1859.—Ordered to be printed.

Mr. WARD made the following

R E P O R T .

[To accompany joint resolution No. 66.]

The Committee on Post Offices and Post Roads, to whom was referred the "Joint resolution authorizing the Postmaster General to adjust the accounts of Peay & Ayliffe for carrying the United States mails on route No. 7503, in the State of Arkansas," beg leave to report :

That from the evidence before the committee they are satisfied something is due to Messrs. Peay & Ayliffe for services performed beyond the stipulations of their contract, and they therefore recommend the passage of the accompanying joint resolution, as a substitute for the one referred to them, authorizing the Postmaster General to settle with the above contractors upon principles of equity and justice.

IN THE SENATE OF THE UNITED STATES.

MARCH 3, 1859.—Ordered to be printed.

Mr. BENJAMIN made the following

REPORT.

[To accompany bill S. 578.]

The Committee on Private Land Claims, to whom was referred Senate bill No. 578, entitled "A bill to release the payment for the town site of the city of San Francisco," report adversely thereto for the reasons set forth in the annexed letter from the Commissioner of the General Land Office, which is made part of this report:

GENERAL LAND OFFICE, February 21, 1859.

SIR: I have the honor to return herewith the "*Bill to release the payment for the town site of the city of San Francisco*," which was received from William M. Burwell, clerk, &c., who requests, on behalf of the chairman of the Committee on Private Land Claims, the opinion of this office as to the propriety of the grant therein contemplated.

In answer I have to state that this office has no knowledge of any entry made by the authorities of that city under the town site act of 1844, nor could any entry of that character have been legally made, there being no returns of survey for the lands referred to. There being nothing before us to show the locality and extent of the land claimed by the city, nor any reliable data for determining the rights of the United States, the city, or individuals in the premises, this office cannot recommend the passage of the bill.

With great respect, your obedient servant,

THOS. A. HENDRICKS,
Commissioner.

Hon. J. P. BENJAMIN,
Chairman Committee on Private Land Claims, U. S. Senate.



IN THE SENATE OF THE UNITED STATES.

MARCH 3, 1859.—Ordered to be printed.

Mr. BENJAMIN made the following

REPORT.

[To accompany bill S. 610.]

The Committee on Private Land Claims, to whom was referred the petition of George C. Johnson praying the passage of a bill for adjudicating the validity of a Mexican grant by the district court of the United States for the northern district of California, submit the following report:

The memorialist claims to be part owner of a tract of land known as the Sup-Yomi estate, situate near Clear lake, and within the jurisdiction of the district court of the United States for the northern district of the State of California.

The title to the Sup-Yomi estate is alleged to be in due form, valid, and undisputed by any adverse claimant, but it is stated that when the board of commissioners for settling private land claims in California were in session the owners of that estate were unable to present the evidence of their title for adjudication by the board, because the original grant or espediente made to them by the government of Mexico was not to be found. Since that time, however, they have discovered this document, and are now prepared to verify the validity of their title before the tribunals having proper jurisdiction of the same.

The memorialist therefore prays the passage of an act in accordance with the terms of his petition, and the committee, deeming the request reasonable, herewith submit a bill authorizing the district court of the United States to adjudicate the validity of his title accordingly.



